

---

<b>State:</b>	District of Columbia	<b>Filing Company:</b>	Tokio Marine America Insurance Company
<b>TOI/Sub-TOI:</b>	09.0 Inland Marine/09.0005 Other Commercial Inland Marine		
<b>Product Name:</b>	Freight Transportation Brokers Cargo Coverage Program		
<b>Project Name/Number:</b>	Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A		

## Filing at a Glance

Company:	Tokio Marine America Insurance Company
Product Name:	Freight Transportation Brokers Cargo Coverage Program
State:	District of Columbia
TOI:	09.0 Inland Marine
Sub-TOI:	09.0005 Other Commercial Inland Marine
Filing Type:	Form
Date Submitted:	09/03/2015
SERFF Tr Num:	WESA-130228307
SERFF Status:	Submitted to State
State Tr Num:	
State Status:	
Co Tr Num:	15-DC-3-OM-3-A
Effective Date	10/01/2015
Requested (New):	
Effective Date	10/01/2015
Requested (Renewal):	
Author(s):	Wesley Pohler
Reviewer(s):	
Disposition Date:	
Disposition Status:	
Effective Date (New):	
Effective Date (Renewal):	

---

<b>State:</b>	District of Columbia	<b>Filing Company:</b>	Tokio Marine America Insurance Company
<b>TOI/Sub-TOI:</b>	09.0 Inland Marine/09.0005 Other Commercial Inland Marine		
<b>Product Name:</b>	Freight Transportation Brokers Cargo Coverage Program		
<b>Project Name/Number:</b>	Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A		

---

## General Information

Project Name: Freight Transportation Brokers Cargo Coverage Status of Filing in Domicile: Not Filed Program

Project Number: 15-DC-3-OM-3-A

Reference Organization: AAIS

Reference Title: Forms

Filing Status Changed: 09/03/2015

State Status Changed:

Created By: Wesley Pohler

Corresponding Filing Tracking Number:

Domicile Status Comments:

Reference Number: Please refer to attached listing

Advisory Org. Circular: Please refer to attached listing

Deemer Date:

Submitted By: Wesley Pohler

Filing Description:

The Company is filing for your review and approval their Uncontrolled Commercial Inland Marine new form filing. A letter permitting Westmont Associates, Inc. to submit this filing on the Company's behalf is enclosed.

The Company is expanding their existing Motor Truck Cargo Program to include specifically tailored forms to address the third-party exposure of the Freight Transportation Broker. Attached for your review are the Company's proprietary and American Association of Insurance Services (AAIS) based endorsements. Please be advised that the Company's Freight Transportation Broker products will be used in conjunction with their existing AAIS Inland Marine program. As such, AAIS endorsements, including state amendatory endorsements, will be used where applicable.

Please see the attached Filing Memorandum for additional information.

Please be advised that the Company is requesting an effective date of October 1, 2015.

## Company and Contact

### Filing Contact Information

Meghan Smart, Analyst

1763 Marlton Pike East

Suite 200

Cherry Hill, NJ 08003

meghans@westmontlaw.com

856-216-0220 [Phone]

### Filing Company Information

(This filing was made by a third party - westmontassociatesinc)

Tokio Marine America Insurance

Company

230 Park Avenue

New York, NY 10169

(212) 297-6600 ext. [Phone]

CoCode: 10945

Group Code: 3098

Group Name: Millea Group

FEIN Number: 13-4032666

State of Domicile: New York

Company Type:

State ID Number:

## Filing Fees

Fee Required? No

Retaliatory? No

Fee Explanation:

<b>SERFF Tracking #:</b>	WESA-130228307	<b>State Tracking #:</b>		<b>Company Tracking #:</b>	15-DC-3-OM-3-A
<b>State:</b>	District of Columbia	<b>Filing Company:</b>	Tokio Marine America Insurance Company		
<b>TOI/Sub-TOI:</b>	09.0 Inland Marine/09.0005 Other Commercial Inland Marine				
<b>Product Name:</b>	Freight Transportation Brokers Cargo Coverage Program				
<b>Project Name/Number:</b>	Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A				

## Correspondence Summary

### Amendments

Schedule	Schedule Item Name	Created By	Created On	Date Submitted
Supporting Document	Cover Letter and Explanatory Memoranda	Wesley Pohler	09/03/2015	09/03/2015

<b>SERFF Tracking #:</b>	WESA-130228307	<b>State Tracking #:</b>		<b>Company Tracking #:</b>	15-DC-3-OM-3-A
<b>State:</b>	District of Columbia			<b>Filing Company:</b>	Tokio Marine America Insurance Company
<b>TOI/Sub-TOI:</b>	09.0 Inland Marine/09.0005 Other Commercial Inland Marine				
<b>Product Name:</b>	Freight Transportation Brokers Cargo Coverage Program				
<b>Project Name/Number:</b>	Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A				

## Amendment Letter

Submitted Date: 09/03/2015

Comments:

Please find attached the correct version of the Company's Filing Memorandum.

Thank you.

Changed Items:

*No Form Schedule Items Changed.*

*No Rate Schedule Items Changed.*

Supporting Document Schedule Item Changes	
<b>Satisfied - Item:</b>	Cover Letter and Explanatory Memoranda
<b>Comments:</b>	
<b>Attachment(s):</b>	DC Cover Letter.pdf Filing Memorandum.pdf
<i>Previous Version</i>	
<b>Satisfied - Item:</b>	<i>Cover Letter and Explanatory Memoranda</i>
<b>Comments:</b>	
<b>Attachment(s):</b>	<i>DC Cover Letter.pdf Filing Memorandum.pdf</i>

State: District of Columbia

Filing Company:

Tokio Marine America Insurance Company

TOI/Sub-TOI: 09.0 Inland Marine/09.0005 Other Commercial Inland Marine

Product Name: Freight Transportation Brokers Cargo Coverage Program

Project Name/Number: Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A

## Form Schedule

Item No.	Schedule Item Status	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data	Readability Score	Attachments
1		FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM	FT7 00 001	10 15	PCF	New			FT7 00 001 10 15 FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM.pdf
2		FREIGHT TRANSPORTATION BROKERS - CARGO LIABILITY COVERAGE FORM (INCLUDING ERRORS OR OMISSIONS)	FT7 00 002	10 15	PCF	New			FT7 00 002 10 15 FREIGHT TRANSPORTATION BROKERS - CARGO LIABILITY COVERAGE FORM.pdf
3		TARPAULIN WARRANTY CONDITION	FT7 00 004	10 15	END	New			FT7 00 004 10 15 Tarpaulin Warranty Condition.pdf
4		MULTIPLE DEDUCTIBLE ENDORSEMENT	FT7 03 001	10 15	END	New			FT7 03 001 10 15 Multiple Deductible Endorsement.pdf
5		FALSE PRETENSE - IMPOSTER THEFT EXTENSION COVERAGE	FT7 04 001	10 15	END	New			FT7 04 001 10 15 False Pretense - Imposter Theft Extension Coverage.pdf
6		PROTECTIVE SAFEGUARDS	FT7 04 002	10 15	END	New			FT7 04 002 10 15 Protective Safeguards.pdf
7		REFRIGERATION BREAKDOWN COVERAGE	FT7 04 003	10 15	END	New			FT7 04 003 10 15 Refrigeration Breakdown Endt.pdf

SERFF Tracking #:

WESA-130228307

State Tracking #:

Company Tracking #:

15-DC-3-OM-3-A

State: District of Columbia

Filing Company:

Tokio Marine America Insurance Company

TOI/Sub-TOI: 09.0 Inland Marine/09.0005 Other Commercial Inland Marine

Product Name: Freight Transportation Brokers Cargo Coverage Program

Project Name/Number: Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A

Item No.	Schedule Item Status	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data	Readability Score	Attachments
8		FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE WARRANTY ENDORSEMENT	FT7 04 004	10 15	END	New			FT7 04 004 10 15 Warranty Endorsement.pdf
9		FREIGHT TRANSPORTATION BROKERS CARGO DECLARATIONS	FT7 05 001	10 15	DEC	New			FT7 05 001 10 15 - FTBC Dec Page.pdf
10		SCHEDULE OF COVERAGES	FT7 05 002	10 15	DEC	New			FT7 05 002 10 15 Schedule of Coverages.pdf
11		ADDITIONAL TERMINALS SCHEDULE	FT7 05 003	10 15	DEC	New			FT7 05 003 10 15 Additional Terminals Schedule.pdf
12		MINIMUM EARNED PREMIUM	FT7 12 001	10 15	END	New			FT7 12 001 10 15 Minimum Earned Premium.pdf
13		REPORTING CONDITIONS ENDORSEMENT	FT7 13 001	10 15	END	New			FT7 13 001 10 15 Reporting Conditions Endt.pdf
14		CONCEALED DAMAGE EXCLUSION	FT7 21 001	10 15	END	New			FT7 21 001 10 15 Concealed Damage Exclusion.pdf
15		PROPERTY EXCLUDED	FT7 21 002	10 15	END	New			FT7 21 002 10 15 Property Excluded.pdf
16		PARKED TRAILER EXCLUSION	FT7 21 003	10 15	END	New			FT7 21 003 10 15 Parked Trailer Exclusion.pdf
17		UNATTENDED VEHICLE EXCLUSION	FT7 21 004	10 15	END	New			FT7 21 004 10 15 Unattended Vehicle Exclusion.pdf

<b>State:</b>	District of Columbia	<b>Filing Company:</b>	Tokio Marine America Insurance Company
<b>TOI/Sub-TOI:</b>	09.0 Inland Marine/09.0005 Other Commercial Inland Marine		
<b>Product Name:</b>	Freight Transportation Brokers Cargo Coverage Program		
<b>Project Name/Number:</b>	Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A		

Item No.	Schedule Item Status	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data	Readability Score	Attachments
18		VIRUS OR BACTERIA EXCLUSION	FT7 21 005	10 15	END	New			FT7 21 005 10 15 Virus or Bacteria Exclusion.pdf
19		TOTAL POLLUTION EXCLUSION	FT7 21 006	10 15	END	New			FT7 21 006 10 15 Total Pollution Exclusion.pdf

**Form Type Legend:**

<b>ABE</b>	Application/Binder/Enrollment	<b>ADV</b>	Advertising
<b>BND</b>	Bond	<b>CER</b>	Certificate
<b>CNR</b>	Canc/NonRen Notice	<b>DEC</b>	Declarations/Schedule
<b>DSC</b>	Disclosure/Notice	<b>END</b>	Endorsement/Amendment/Conditions
<b>ERS</b>	Election/Rejection/Supplemental Applications	<b>OTH</b>	Other

# FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM

Throughout this coverage form and endorsements, the words "you" and "your" mean the persons or organizations named as the Named Insured on the Declarations and the words "we", "us", and "our" mean the company providing this coverage.

Refer to the Definitions section at the end of this coverage form for additional words and phrases that have special meaning. These words and phrases are shown in quotation marks.

## AGREEMENT

In return for "your" payment of the required premium, "we" provide the legal liability coverage described herein subject to all the "terms" of the Freight Transportation Brokers Cargo Coverage Form. This coverage is also subject to the "schedule of coverages" and additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the "schedule of coverages".

## COVERED PROPERTY

### 1. Property In Vehicles --

- a. **Coverage** -- "We" cover "you" for sums you become legally obligated to pay for "your" legal liability for direct physical loss or damage caused by a covered peril to property of others described on the "schedule of coverages" while:

- 1) in due course of "transit" including, loading and unloading, provided "your" "subcontractors" legal liability coverage also includes loading and unloading coverage; and
- 2) in the care, custody, and control of "your" "subcontractor".

"We" only cover "you" for "your" "subcontractor's" legal liability as a common carrier or contract carrier if "you" are unable to collect the amount of the loss or damage from "your" "subcontractor" or the insurer who is providing "your" "subcontractor" with property in vehicles coverage under a motor truck cargo legal liability insurance policy.

b. **Coverage Limitations** --

- 1) "We" only cover property of others while in due course of "transit" on or in a "vehicle".
- 2) "We" only cover property of others that "your" "subcontractor" becomes legally obligated to pay as a common carrier or contract carrier.
- 3) "We" only cover loading and unloading if the property of others is loaded from or unloaded onto a sidewalk, street, loading dock, or similar area that is adjacent to a "vehicle".

### 2. Property In Terminals --

- a. **Coverage** -- "We" cover "you" for "your" subcontractors legal liability for direct physical loss or damage caused by a covered peril to property of others described on the "schedule of coverages" while:



- 1) at a "terminal" location, provided "your" "subcontractors" legal liability coverage also includes coverage for property at a "terminal" location; and
- 2) in the care, custody, and control of "your" "subcontractor".

"We" only cover "you" for "your" "subcontractor's" legal liability as a common carrier or contract carrier if "you" are unable to collect the amount of the loss or damage from "your" "subcontractor" or the insurer who is providing "your" "subcontractor" with property in terminals coverage under a motor truck cargo legal liability insurance policy.

**b. Coverage Limitations --**

- 1) "We" only cover property of others:

- a) if Property In Terminals coverage is indicated on the "schedule of coverages"; and
- b) while at a "terminal" location or within 150 feet of a "terminal" location.

- 2) "We" only cover property of others:

- a) while the property is in due course of "transit"; and
- b) that "your" "subcontractor" becomes legally obligated to pay as a common carrier or contract carrier.

**3. Your Inability To Collect From The Subcontractor's Insurer --** "Your" inability to collect the amount of the loss or damage from "your" "subcontractor's" motor truck cargo legal liability insurer must be as a result of:

- a. "your" "subcontractor's" insurance policy being canceled or non-renewed without "your" knowledge;
- b. the insurance limits in "your" "subcontractor's" insurance policy are insufficient to cover the total loss or damage; or
- c. the loss or damage is excluded under the terms of "your" "subcontractor's" insurance policy.

**4. You Must Obtain Evidence Of Insurance --** "We" only cover "you" for "your" "subcontractor's" legal liability as a common carrier or contract carrier if prior to a shipment by "your" "subcontractor" "you" have obtained evidence of in-force insurance from "your" "subcontractor".

"Your" "subcontractor's" insurance policy must:

- a. be for motor truck cargo legal liability insurance coverage; and
- b. provide insurance limits that are equal to or greater than "your" "subcontractor's" legal liability under the bill of lading, contract of carriage, or shipping receipt.

**PROPERTY NOT COVERED**

1. **Art** -- "We do not cover objects of art including paintings and statuary.

2. **Contraband** -- "We" do not cover contraband or property in the course of illegal transportation or trade.
3. **Jewelry, Stones, And Metals** -- "We" do not cover jewelry, precious or semi-precious stones, gold, silver, platinum, or other precious metals or alloys. Copper is not considered a precious metal.
4. **Live Animals** -- "We" do not cover animals including cattle or poultry unless death is caused or made necessary by a "specified peril".
5. **Money And Securities** -- "We" do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.
6. **Property At A Terminal** -- "We" do not cover property of others after 30 consecutive days following the arrival of the property at a "terminal".
7. **Property That Has Been Delivered** -- "We" do not cover property of others after 72 hours following the arrival of the property at the intended destination.
8. **Storage** -- "We" do not cover property held in storage under warehouse receipts or other written contracts.
9. **Trailer, Container Or Conveyance** -- "We" do not cover any intermodal container, "trailer", or any other carrying conveyance including any equipment or supplies that are part of the container, "trailer", or conveyance.

This exclusion does not apply to property of others as described under Property Covered.

## **COVERAGE EXTENSIONS**

### **Defense Costs --**

1. **Coverage** -- "We" have the option to defend any "suit" brought against "you" as a result of loss or damage to covered property caused by a covered loss. "We" may investigate and settle a claim or "suit". "You" must cooperate with "us" in the investigation or settlement of the claim or defense against a "suit" not originated by "you".

No deductible applies to this coverage.

2. **Coverage Limitation** -- "We" do not have to provide a defense after "we" have paid the "limit" as a result of a judgment or written settlement.
3. **You Must Not** -- "You" must not:
  - a. admit liability for a loss, settle a claim, or incur expense without "our" written consent; or
  - b. interfere with "our" negotiation for a settlement.
4. **Covered Expenses** -- "We" will pay the following expenses associated with any "suit" "we" defend:
  - a. expenses that "we" incur while investigating and defending the "suit";
  - b. actual loss of "your" salary, up to \$300 per day, for "your" time spent away from work at "our" request;

- c. expenses that "you" incur at "our" request;
  - d. all costs that "you" are required to pay as a result of any "suit" "we" defend that is not originated by "you";
  - e. interest that accrues after entry of a judgment, until "we" tender, deposit in court, or pay "our" part of the judgment;
  - f. interest that is awarded against "you" before the entry of a judgment. If "we" make an offer to settle the "suit", "we" will not pay any interest that accrues after the offer to settle; and
  - g. cost of a bond for the release of attachments. "We" are not required to furnish a bond itself.
5. **Part Of Limit** -- Unless otherwise indicated in a state amendatory endorsement attached to this policy, except for defense cost expenses "we" incur defending a "suit" originated by "you", the coverage provided under this Coverage Extension is part of and not in addition to the applicable "limit" for coverage described under Property Covered.

## COVERED PERILS

"We" cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

## EXCLUDED PERILS

1. "We" do not pay for loss or damage caused directly or indirectly by one or more of the following excluded causes or events. Such loss or damage is excluded regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.
  - a. **Civil Authority** -- Order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

"We" do cover loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.
  - b. **Nuclear Hazard** -- Nuclear reaction, nuclear radiation, or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental, or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion, or smoke. Direct loss by fire resulting from the nuclear hazard is covered.
  - c. **War And Military Action** --
    - 1) War, including undeclared war or civil war; or
    - 2) a warlike action by a military force, including action taken to prevent or defend against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
    - 3) insurrection, rebellion, revolution, or unlawful seizure of power including action taken by Governmental authority to prevent or defend against any of these.

With regard to any action that comes within the "terms" of this exclusion and involves nuclear reaction, nuclear radiation, or radioactive contamination, this War And Military Action exclusion will apply in place of the Nuclear Hazard exclusion.

2. "We" do not pay for loss or damage that is caused by or results from one or more of the following:
- a. **Criminal, Fraudulent, Dishonest, Or Illegal Acts** -- "We" do not pay for loss caused by or resulting from criminal, fraudulent, dishonest, or illegal acts committed alone or in collusion with another by:
    - 1) "you";
    - 2) others who have an interest in the property;
    - 3) others to whom "you" entrust the property including but not limited to "subcontractor's" and owner-operators "you" have hired;
    - 4) "your" partners, officers, directors, trustees, joint venturers, or "your" members or managers if "you" are a limited liability company; or
    - 5) the employees or agents of 1), 2), 3), or 4) above, whether or not they are at work.
- This exclusion does not apply to acts of destruction by "your" employees, but "we" do not pay for theft by employees.
- b. **Loss Of Use** -- "We" do not pay for loss caused by or resulting from loss of use, delay, or loss of market.
  - c. **Pollutants** -- "We" do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of "pollutants" unless the release, discharge, seepage, migration, dispersal, or escape is caused by a "specified peril".
- "We" do cover any resulting loss caused by a "specified peril".
- d. **Spoilage** -- "We" do not cover loss to "perishable stock" caused by "spoilage".
- But if "spoilage" results in a "specified peril", "we" do cover the loss or damage caused by that "specified peril".
- e. **Voluntary Parting** -- "We" do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.
3. "we" do not pay for loss or damage caused directly or indirectly due to the rendering of or failure to render any professional services, including any errors or omissions.

## CONDITIONS

### WHAT MUST BE DONE IN CASE OF LOSS

- 1. **Notice** -- In case of a loss, "you" must:
  - a. give "us" or "our" agent prompt notice within a maximum 30 days of "your" first notice of a loss or possible loss, including a description of the property involved ("we" may request written notice). and
  - b. give prompt notice to the police when the act that causes the loss is a crime.

2. **Recovery From Subcontractor** -- In case of a loss, "you" must make every reasonable and proper effort to collect the amount of the loss or damage from the "subcontractor" or the insurer who is providing "your" "subcontractor" with a motor truck cargo legal liability insurance policy.

Every reasonable and proper effort includes complying with all of the requirements for the filing of claims against the "subcontractor" and/or the "subcontractor's" insurer.

3. **Protect Property** -- All reasonable steps to protect covered property should be taken at and after an insured loss to avoid further loss.

- a. **Payment Of Reasonable Costs** -- "We" will pay the reasonable costs incurred for necessary repairs or emergency measures performed solely to protect covered property from further damage by a peril insured against if a peril insured against has already caused a loss to covered property.

An accurate record of such costs must be kept. "Our" payment of reasonable costs does not increase the "limit".

- b. **We Do Not Pay** -- "We" do not pay for such repairs or emergency measures performed on property which has not been damaged by a peril insured against.

4. **Proof Of Loss** -- "You" must send "us", within 60 days after "our" request, a signed, sworn proof of loss. This must include the following information:

- a. the time, place, and circumstances of the loss;
- b. other policies of insurance that may cover the loss;
- c. "your" interest and the interests of all others in the property involved, including all liens;
- d. changes in title of the covered property during the policy period; and
- e. copies of "your" and "your" "subcontractor's" written agreements executed prior to the loss on covered property, and estimates, specifications, inventories, and other reasonable information that "we" may require to settle the loss.

5. **Examination** -- "You" must submit to examination under oath in matters connected with the loss as often as "we" reasonably request and give "us" sworn statements of the answers. If more than one person is examined, "we" have the right to examine and receive statements separately and not in the presence of others.

6. **Records** -- "You" must produce records, including tax returns and bank microfilms of all canceled checks relating to value, loss, and expense and permit copies and extracts to be made of them as often as "we" reasonably request.

7. **Damaged Property** -- If the damaged and undamaged property is in "your" care, custody, or control, "you" must exhibit the property as often as "we" reasonably request and allow "us" to inspect or take samples of the property.

8. **Volunteer Payments** -- "You" must not, except at "your" own expense, voluntarily make any payments, assume any obligations, pay or offer any rewards, or incur any other expenses except as respects protecting property from further damage.

9. **Abandonment** -- "You" may not abandon the property to "us" without "our" written consent.

10. **Cooperation** -- "You" must cooperate with "us" in performing all acts required by this policy.

## VALUATION

### 1. Property Of Others --

- a. **Actual Cash Value** -- Except as described below under item 1.b., the value of property of others, as described under Property Covered, will be based on the actual cash value at the time of the loss (with a deduction for depreciation).
- b. **If Responsibility For Covered Property Is Reduced** -- if the amount of "your" "subcontractor's" responsibility for covered property is reduced, "we" will not pay more for loss to covered property than the reduced amount of "your" "subcontractor's" responsibility.

The reduced amount of "your" "subcontractor's" responsibility will be based on an amount:

- 1) set by law; or
  - 2) lawfully set by "your" "subcontractor" in a bill of lading, contract of carriage, or shipping receipt that is issued by "your" "subcontractor".
2. **Pair Or Set** -- The value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.
3. **Loss To Parts** -- The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace.

## HOW MUCH WE PAY

1. **Insurable Interest** -- "We" do not cover more than "your" insurable interest in any property.
2. **Deductible** -- "We" pay only that part of the loss over the deductible amount indicated on the "schedule of coverages" in any one occurrence.

"We" may pay all or a portion of the deductible amount to settle a loss or "suit". If "we" do pay all or a portion of the deductible amount, "you" must promptly reimburse "us" for the amount that "we" paid.

3. **Loss Settlement Terms** -- Subject to paragraphs 1., 2., 4., and 5. under How Much We Pay:
- a. **We Pay The Lesser Of** -- "We" pay the lesser of:
    - 1) the amount determined under Valuation; or
    - 2) the "limit" for "vehicle" or "terminal" location indicated on the "schedule of coverages".
  - b. **Catastrophe Limit** -- In no event will "we" pay more than the catastrophe "limit" indicated on the "schedule of coverages" regardless if a loss involves:
    - 1) one or more "vehicles";
    - 2) one or more "terminal" locations; or
    - 3) any combination of "vehicles" or "terminal" locations.

- c. **When A Vehicle Is At A Terminal** -- The "limit" for the "terminal" location applies when a "vehicle" is situated within:
- 1) a "terminal" building; or
  - 2) within 150 feet of a "terminal" building.

In no event will "we" combine the "limit" for a "terminal" location with the "limit" for a "vehicle".

4. **Insurance Under More Than One Coverage** -- If more than one coverage of this policy insures the same loss, "we" pay no more than the actual claim, loss, or damage sustained.
5. **Insurance Under More Than One Policy** -- "You" may have another policy subject to the same "terms" as this policy. If "you" do, "we" will pay "our" share of the covered loss. "Our" share is the proportion that the applicable "limit" under this policy bears to the "limit" of all policies covering on the same basis.

## **LOSS PAYMENT**

### **1. Loss Payment Options --**

- a. **Our Options** --In the event of loss covered by this coverage form, "we" have the following options:
- 1) pay the value of the lost or damaged property;
  - 2) pay the cost of repairing or replacing the lost or damaged property;
  - 3) rebuild, repair, or replace the property with other property of equivalent kind and quality, to the extent practicable, within a reasonable time; or
  - 4) take all or any part of the property at the agreed or appraised value.
- b. **Notice Of Our Intent To Rebuild, Repair, Or Replace** -- "We" must give "you" notice of "our" intent to rebuild, repair, or replace within 30 days after receipt of a duly executed proof of loss.

### **2. Property Of Others --**

- a. **Conditions For Payment Of Loss** -- An insured loss will be payable 30 days after:
- 1) a satisfactory proof of loss is received; and
  - 2) the amount of the loss has been established either by written agreement with "you" or the filing of an appraisal award with "us".
- b. **Adjustment And Payment Of Loss To Property Of Others** -- Losses to property of others may be adjusted with and paid to:
- 1) "you" on behalf of the owner; or
  - 2) the owner.
- c. **We Do Not Have To Pay You If We Pay The Owner** -- If "we" pay the owner, "we" do not have to pay "you". "We" may also choose to defend any "suits" arising from the owners at "our" expense.

## OTHER CONDITIONS

1. **Appraisal** -- If "you" and "we" do not agree on the amount of the loss or the value of covered property, either party may demand that these amounts be determined by appraisal.

If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, "you" or "we" can ask a judge of a court of record in the state where the property is located to select an umpire.

The appraisers will then determine and state separately the amount of each loss.

The appraisers will also determine the value of covered property items at the time of the loss, if requested.

If the appraisers submit a written report of any agreement to "us", the amount agreed upon will be the amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three, sets the amount of the loss.

Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be paid equally by "you" and "us".

2. **Bankruptcy Of An Insured** -- Bankruptcy or insolvency of an insured does not relieve "us" of "our" obligations under this coverage.
3. **Benefit To Others** -- Insurance under this coverage will not directly or indirectly benefit anyone having custody of "your" property.
4. **Conformity With Statute** -- When a condition of this coverage is in conflict with an applicable law, that condition is amended to conform to that law.
5. **Estates** -- This provision applies only if the insured is an individual.
  - a. **Your Death** -- On "your" death, "we" cover the following as an insured:
    - 1) the person who has custody of "your" property until a legal representative is qualified and appointed; or
    - 2) "your" legal representative.

This person or organization is an insured only with respect to property covered by this coverage.
  - b. **Policy Period Is Not Extended** -- This coverage does not extend past the policy period indicated on the declarations.
6. **Misrepresentation, Concealment, Or Fraud** -- This coverage is void as to "you" and any other insured if, before or after a loss:
  - a. "you" or any other insured have willfully concealed or misrepresented:
    - 1) a material fact or circumstance that relates to this insurance or the subject thereof; or
    - 2) "your" interest herein; or



- b. there has been fraud or false swearing by "you" or any other insured with regard to a matter that relates to this insurance or the subject thereof.

7. **Policy Period** -- "We" pay for a covered loss that occurs during the policy period.

8. **Recoveries** -- If "we" pay "you" for the loss and lost or damaged property is recovered, or payment is made by those responsible for the loss, the following provisions apply:

- a. "you" must notify "us" promptly if "you" recover property or receive payment;
- b. "we" must notify "you" promptly if "we" recover property or receive payment;
- c. any recovery expenses incurred by either are reimbursed first;
- d. "you" may keep the recovered property but "you" must refund to "us" the amount of the claim paid or any lesser amount to which "we" agree; and
- e. if the claim paid is less than the agreed loss due to a deductible or other limiting "terms" of this policy, any recovery will be pro-rated between "you" and "us" based on "our" respective interest in the loss.

9. **Restoration Of Limits** -- A loss "we" pay under this coverage does not reduce the applicable "limits".

10. **Subrogation** -- If "we" pay for a loss, "we" may require "you" to assign to "us" "your" right of recovery against others. "You" must do all that is necessary to secure "our" rights. "We" do not pay for a loss if "you" impair this right to recover.

11. **Suit Against Us** -- No "suit" may be brought against "us" unless:

- a. all of the "terms" of this coverage have been complied with;
- b. the amount of the insured's liability has been determined by:
  - 1) a final judgment against an insured as a result of a trial; or
  - 2) a written agreement by the insured, the claimant, and "us"; and
- c. regardless of "your" first knowledge of the direct loss or damage or a "suit", legal action against "us" must be brought within 2 years after the date of loss or possible damage.

No person has a right under this coverage to join "us" or implead "us" in actions that are brought to determine an insured's liability.

12. **Territorial Limits** -- "We" cover property while it is in the United States of America, its territories and possessions, Canada, and Puerto Rico.

13. **Your Reimbursement To Us** -- "You" must reimburse "us" all sums for a loss that "we" have paid and that "we" would not have been required to pay except for the attachment to this policy of any federal, state, or other regulatory endorsement.

"You" must reimburse "us" within 30 days after "we" have notified "you" that "we" have paid a loss that "we" would not have been required to pay except for the attachment of a required regulatory endorsement.

## DEFINITIONS

1. "Limit" means the amount of coverage that applies.
2. "Perishable stock" means property preserved and maintained under controlled conditions and susceptible to loss or damage if the controlled conditions change.
3. "Pollutant" means:
  - a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including but not limited to acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned, as well as disposed of; and
  - b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.
4. "Schedule of coverages" means:
  - a. all pages labeled "schedule of coverages" or schedules that pertain to this coverage; and
  - b. declarations or supplemental declarations that pertain to this coverage.
5. "Specified perils" means the perils of:
  - a. fire;
  - b. lightning; windstorm; hail;
  - c. collision, overturn, or derailment of a transporting conveyance;
  - d. collapse of a bridge or culvert; and
  - e. theft.
6. "Spoilage" means any detrimental change in physical state of "perishable stock". Detrimental change includes, but is not limited to, thawing of frozen goods, warming of refrigerated goods, or solidification of liquid material.
7. "Suit" means a judicial proceeding that has been set up to determine liability and damages for loss to property of others that consists of covered property that is in "your" care, custody, or control. Judicial proceedings also include arbitration proceedings in the event that "you" may be required to submit to arbitration.
8. "Subcontractor" means a trucking company or trucker that "you" hire to transport property of others, property that is described on the "schedule of coverages".
9. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply.
10. "Terminal" means a building, where covered property is transferred between "vehicles" or between "vehicles" and other transporting conveyances.

The transfer of covered property is limited to:

- a. loading and unloading; and
- b. any temporary storage associated with the transfer of property.

11. "Trailer" means an over-the-road vehicle designed to carry cargo while being hauled by a tractor or other self-propelled power unit.

"Trailer" includes but is not limited to:

- a. "trailers", semi-trailers, automobile racks, flatbeds, lowboys, and tankers;
- b. dollies used to convert semi-trailers into "trailers"; and
- c. shipping containers designed to be attached to and transported by "trailers".

12. "Transit" means the shipment of covered property by "you" and "your" "subcontractor's", and the shipment:

- a. begins at the point of transport where "you" accept property into "your" care, custody, or control for the transportation of the property to a specific destination;
- b. includes the ordinary, reasonable, and necessary stops, interruptions, delays, or transfers incidental to the route and method of shipment, including rest periods taken by the driver(s); and
- c. ends upon acceptance of the goods by or on behalf of the consignee at the specified destination.

13. "Vehicle" means any one "vehicle", truck, tractor, "trailer", or combination of these pulled by one power unit.

# FREIGHT TRANSPORTATION BROKERS - CARGO LIABILITY COVERAGE FORM (INCLUDING ERRORS OR OMISSIONS)

Throughout this coverage form and endorsements, the words "you" and "your" mean the persons or organizations shown as the Named Insureds on the "schedule of coverages" and the words "we", "us", and "our" mean the company providing this coverage.

Refer to the **DEFINITIONS** section at the end of this coverage form for additional words and phrases that have special meaning. These words and phrases are shown in quotation marks.

## **AGREEMENT**

---

In return for "your" payment of the required premium, "we" will pay those sums that "you" become legally obligated to pay as damages as a "freight broker" because of direct physical loss or damage to **Covered Property** from any of the **Covered Perils**.

If a deductible amount is shown on the "schedule of coverages", "our" obligation to pay damages and **Covered Expenses** applies only to the amount of damages and **Covered Expenses** in excess of that deductible amount. The deductible applies to loss or damage and **Covered Expenses** in any one occurrence.

"We" have the right and duty to defend "you" against any "suit" seeking those damages. However, "we" have no duty to defend "you" against any "suit" seeking damages to which this insurance does not apply. "We" may, at "our" discretion, investigate any occurrence and settle any claim or "suit" that may result. But:

1. The most "we" will pay for loss or damage and **Covered Expenses** in any one occurrence is the applicable "limit" shown on the "schedule of coverages" and
2. "Our" right and duty to defend ends when "we" have used up the "limit" in the payment of judgments, settlements or Covered Expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under the **COVERED EXPENSES** section or the **COVERED FINES AND PENALTIES** section.

This insurance applies to loss or damage only if:

1. The loss or damages takes place in The United States of America (including its territories and possessions), Puerto Rico, and Canada provided "your" responsibility to pay damages is determined:
  - a. In a "suit" on the merits, in The United States of America (including its territories and possessions), Puerto Rico, and Canada; or
  - b. In a settlement "we" agree to; and
2. The loss or damage occurs during the policy period.

## COVERED EXPENSES

---

**Covered Expenses**, as used in this Coverage Form, mean the following expenses "we" will pay, with respect to any claim "we" investigate or settle, or any "suit" against "you" that "we" defend:

1. All expenses "we" incur.
2. The cost of bonds to release attachments, but only for bond amounts within the applicable "limit". "We" do not have to furnish these bonds.
3. All reasonable expenses incurred by "you" at "our" request to assist "us" in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$300 a day because of time off from work.
4. All court costs taxed against "you" in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against "you".
5. Prejudgment interest awarded against "you" on that part of the judgment "we" pay. If "we" make an offer to pay the applicable "limit", "we" will not pay any prejudgment interest based on that period of time after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment before "we" have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable "limit".

## COVERED FINES AND PENALTIES

---

When a "limit" for Acts, Errors Or Omissions Coverage is shown on the "schedule of coverages", **Covered Fines And Penalties**, as used in this Coverage Form, mean those fines and penalties imposed on "you" that "we" will pay, with respect to any claim "we" investigate or settle, or any "suit" against "you" that "we" defend:

Fines and penalties include but are not limited to customs duty, sales or excise tax or similar fiscal charge, claimed or levied against "your" shipper customer by a recognized and legitimate authority as a result of "your" unintentional act, error or omission.

The most of "we" will pay all such fines and penalties during the policy term is the applicable "limit" shown on the "schedule of coverages".

## COVERED PROPERTY

---

**Covered Property**, as used in this Coverage Form, means tangible property of others described on the "schedule of coverages" while either:

1. **Property In Transit**
  - a. In due course of "transit" by air, rail, or "vehicles"; and
  - b. In the care, custody, or control of "your" "subcontractor"; or
2. **Property In Terminals**
  - a. In a "terminal" described on the "schedule of coverages" or within 150 feet of such a "terminal"; and
  - b. In the care, custody, or control of "your" "subcontractor".

## **EXCLUDED PROPERTY**

---

**Covered Property** does not include the following.

**1. Art**

"We" do not cover objects of art including paintings and statuary.

**2. Container, Trailer Or Conveyance**

"We" do not cover any intermodal container, "trailer", or any other carrying conveyance including any equipment or supplies that are part of the container, "trailer", or conveyance.

**3. Contraband**

"We" do not cover contraband or property in the course of illegal transportation or trade.

**4. Contractually Assumed**

"We" do not cover property for which "you" have assumed liability under any contract or agreement in excess of liability imposed by law.

**5. Jewelry, Stones, Or Metals**

"We" do not cover jewelry, precious or semi-precious stones, gold, silver, platinum, or other precious metals or alloys. For the purpose of this exclusion, copper is not considered a precious metal.

**6. Live Animals**

"We" do not cover live animals, including cattle or poultry, unless death is caused or made necessary by a "specified peril".

**7. Money Or Securities**

"We" do not cover accounts, bills, currency, food stamps or other evidences of debt, lottery tickets not held for sale, money, notes or securities.

**8. Property At A Terminal**

"We" do not cover property of others after 30 consecutive days following the arrival of such property at a "terminal".

**9. Property That Has Been Delivered**

"We" do not cover property of others after 72 hours following the arrival of the property at the intended destination.

**10. Storage Under Written Contracts**

"We" do not cover property held in storage under a warehouse receipt or any other written contracts.

## **COVERED PERILS**

---

**Covered Perils** mean direct physical loss or damage to **Covered Property** except those perils listed in the **EXCLUDED PERILS** section.

## EXCLUDED PERILS

---

### 1. Acts, Errors Or Omissions

"We" do not pay for loss or damage caused directly or indirectly by any act, error or omission with respect to any transportation document, including but not limited to a bill of lading or similar contract of carriage.

However, when a "limit" for Acts, Errors Or Omissions Coverage is shown on the "schedule of coverages", "we" will pay loss or damage to Covered Property directly caused by:

- a. "Your" negligent act, error or omission; or
- b. The negligent act, error or omission of a person or organization working on "your" behalf with "your" permission to do so

but only arising out of the:

- a. The preparing, issuing or approving of "your" transportation documents;
- b. The providing of written shipping instructions that results in direct loss or damage to **Covered Property** caused by a delay, misdelivery or wrongful delivery of the **Covered Property**;
- c. The failure of "your" "subcontractors" to follow written shipping instructions given to "you" by "your" shipping customer prior to loss or damage to **Covered Property**; or
- d. The amending of the written information on a bill of lading or similar contract of carriage after it has been issued, including but not limited to:
  - (1) Pre- or post-dating of the bill of lading or similar contract of carriage by others;
  - (2) Changing of the delivery route to an unlawful or unreasonable route; and
  - (3) Entering an incorrect location of loading or unloading, delivery route, cargo, weight, cargo number or quantity of the cargo.

### 2. Civil Authority

"We" do not pay for loss or damage caused by an order of any civil authority, including but not limited to seizure, confiscation, destruction, or a quarantine of property.

However, "we" do cover loss or damage resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this Coverage Form.

### 3. Criminal Or Dishonest Acts

"We" do not pay for loss or damage caused by or resulting from criminal, fraudulent, dishonest, or illegal acts committed alone or in collusion with another by:

- a. "You";
- b. Others who have an interest in the property;
- c. Others to whom "you" entrust Covered Property, including but not limited to "you" "subcontractor's" and owner-operators "you" have hired;
- d. "Your" partners, officers, directors, trustees, joint ventures, or "your" members or managers if "you" are a limited liability company; or
- e. The employees, including temporary employees, leased workers or agents of (1), (2), (3) or (4) above, whether or not they are in the course of employment.

This exclusion does not apply to acts of vandalism by "your" employees.

#### **4. Electromagnetic Radiation**

"We" do not pay for loss or damage caused by or resulting from the presence of or exposure to "electromagnetic radiation".

#### **5. Loss Of Use**

"We" do not pay for loss or damage caused by or resulting from loss of use, delay or loss of market share.

#### **6. Nuclear Hazard**

"We" do not pay for loss or damage caused directly or indirectly by nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination results in fire, "we" will pay for the direct loss or damage caused by that fire if the fire would be covered under this Coverage Form.

#### **7. Pollutants**

"We" do not pay for loss or damage caused by or resulting from release, discharge, seepage, migration, dispersal or escape of "pollutants" unless the release, discharge, seepage, migration, dispersal or escape is caused by a "specified peril". But if loss or damage by a "specified peril" results, "we" will pay for the loss or damage caused by that "specified peril".

#### **8. Professional Services**

"We" do not pay for loss or damage caused directly or indirectly by the rendering of or failure to render any professional services, including but not limited to legal, accounting, or advertising services.

However, this exclusion does not apply to loss or damage caused directly by the rendering of or failure to render professional services by "you" as a "freight broker".

#### **9. Spoilage**

"We" do not cover loss or damage to "perishable stock" caused by "spoilage".

However, if "spoilage" results in a "specified peril", "we" do cover the loss or damage caused by that "specified peril".

#### **10. Voluntary Parting**

"We" do not pay for loss or damage caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.

#### **11. War And Military Action**

"We" do not pay for loss or damage caused directly or indirectly by

- a.** War, including undeclared or civil war;
- b.** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
- c.** Insurrection, rebellion, revolution, usurped power, or action taken by a governmental authority in hindering or defending against any of these.

With regard to any action that comes within the "terms" of this exclusion and involves nuclear reaction, nuclear radiation, or radioactive contamination, this War And Military Action exclusion will apply in place of the Nuclear Hazard exclusion.



## CONDITIONS

---

### 1. Bankruptcy

"Your" bankruptcy or insolvency or that of "your" estate will not relieve "us" of "our" obligations under this policy.

### 2. Duties In The Event of A Loss

a. "You" must see to it and verify in writing that your "subcontractors" promptly notify law enforcement if the **Covered Property** is stolen;

b. "You" must see to it that "we" are notified promptly of any occurrence that may result in a claim. Notice should include:

(1) How, when and where the occurrence took place;

(2) The names and addresses of the "subcontractor's"; and

(3) The names and addresses of any witnesses.

Notice of an occurrence is not a notice of a "suit".

c. If a claim is made or a "suit" is brought against "you", "you" must see to it that "we" receive prompt notice of the "suit",

d. "You" must:

(1) Immediately send "us" copies of any demands, notices, summonses, or legal papers received in connection with the claim or "suit";

(2) Authorize "us" to obtain records and other information;

(3) Cooperate with "us" in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist "us", upon "our" request, in the enforcement of any right against any person or organization that may be liable to "you" because of loss or damage to which this insurance may also apply.

e. "You" will not, except at "your" own cost, voluntarily make a payment, assume any obligation or incur any expense without "our" consent.

### 3. Deductible Reimbursement

"We" may pay any part or all of the deductible amount to effect settlement of any "suit" and, upon notification of the action taken, "you" shall promptly reimburse "us" for such part of the deductible amount as has been paid by "us".

### 4. Other Insurance

If other valid and collectible insurance is available to "you" for a loss or damage "we" cover under this Coverage Form, "our" obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, "our" obligations are not affected unless any of the other insurance is also primary. Then, "we" will share with all that other insurance by the method described in Paragraph **c.** below.

#### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent, or on any other basis:

- (1) That is Fire, Extended Coverage, or similar coverage for personal property of others;
- (2) That is Motor Truck Cargo insurance or similar coverage; or
- (3) Inland marine or ocean marine transportation insurance.

**c. Method Of Sharing**

If all of the other insurance, except the types of insurance described in paragraph **b.** above, permits contribution by equal shares, "we" will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, "we" will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**5. Premium Audit**

- a. "We" will compute all premiums for this policy in accordance with "our" rules and rates.
- b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period "we" will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, "we" will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information "we" need for premium computation, and send "us" promptly copies at such times as "we" may request.

**6. Representations**

By accepting this policy, "you" agree:

- a. The statements on the "schedule of coverages" are accurate and complete;
- b. Those statements are based upon representations "you" made to "us"; and
- c. "We" have issued this policy in reliance upon "your" representations.

**7. Transfer Of Rights Of Recovery Against Others To Us**

If "you" have rights to recover all or part of any payment "we" have made under this policy, those rights are transferred to "us". "You" must do nothing after loss to impair them. At "our" request, "you" will bring "suit" or transfer those rights to "us" and help "us" enforce them.

**8. When We Do Not Renew**

If "we" decide not to renew this policy, "we" will mail or deliver to the first Named Insured shown in the Declarations written notice of the non-renewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**9. When You Do Not Agree To Settle A Suit**

If "we" recommend a settlement to "you" which is acceptable to the claimant but to which "you" do not agree, the most "we" will pay as damages, **Covered Expenses** and **Covered Fines And Penalties** in the event of any later settlement or judgment is:

- a. The amount which the "suit" could have been settled, to which "you" did not agree to; and
- b. "Our" share of the **Covered Expenses** and **Covered Fines and Penalties** up to the date "you" did not agree to the settlement "we" recommended.

This condition applies only when the sum of:

- a. The settlement "we" recommended;
  - b. All **Covered Expenses** incurred and **Covered Fines And Penalties** imposed at the time of such settlement or offer; and
  - c. All other settlements or judgments arising out of the same occurrence
- is in excess of the deductible amount shown on the "schedule of coverages".

## DEFINITIONS

---

- 1. "Electromagnetic radiation" means any type of electromagnetic radiation including, but not limited to, radio waves, microwaves, infrared radiation, terahertz radiation, ultraviolet radiation, x-rays and gamma rays. It also means any magnetic fields or any combination of magnetic fields, charges, currents, energy, electricity or forces generated or transmitted through or via any medium, methods, products or equipment that generate, produce, store, distribute, transport or transmit the electrical charges, currents, frequencies, energy or forces related to or associated with electromagnetic radiation.
- 2. "Freight broker" means a person or organization that, in the regular course of its business and for compensation, arranges for the transportation of the property of others by an air carrier, rail carrier, motor carrier, or freight forwarder.
- 3. "Limit" means the amount of coverage that applies.
- 4. "Perishable stock" means property preserved and maintained under controlled conditions and susceptible to loss or damage if the controlled conditions change.
- 5. "Pollutants" mean any solid, liquid, gaseous, or thermal irritant or contaminant, including but not limited to acids, alkalis, chemicals, fumes, smoke, soot, vapor and waste. Waste includes materials to be recycled, reclaimed, or reconditioned.
- 6. "Schedule of coverages" means:
  - a. All endorsements entitled "Schedule Of Coverages" or schedules that pertain to this coverage; and
  - b. Declarations or supplemental declarations that pertain to this coverage.
- 7. "Specified perils" means the perils of:
  - a. Fire;
  - b. Lightning; windstorm; hail;
  - c. Collision, overturn, or derailment of a transporting conveyance;
  - d. Collapse of a bridge or culvert; and
  - e. Theft.
- 8. "Spoilage" means any detrimental change in physical state of "perishable stock". Detrimental change includes, but is not limited to, thawing of frozen goods, warming of refrigerated goods or solidification of liquid material.
- 9. "Subcontractor" means an air carrier, rail carrier, motor carrier, or freight forwarder that "you" hire to transport the **Covered Property** of others described on the "schedule of coverages".
- 10. "Suit" means a judicial proceeding that has been set up to determine liability and damages because of loss or damage to **Covered Property** to which this insurance applies. A judicial proceeding includes arbitration proceedings in the event that "you" may be required to submit to arbitration.
- 11. "Terminal" means a building for the "transferring" of **Covered Property**.

- 12.** "Terms" means all provisions, limitations, exclusions, conditions and definitions that apply.
- 13.** "Trailer" means an over-the-road vehicle designed to carry cargo while being hauled by a tractor or other self-propelled power unit.
- "Trailer" includes but is not limited to:
- a.** Trailers, semi-trailers, automobile racks, flatbeds, lowboys and tankers;
  - b.** Dollies used to convert semi-trailers into "trailers"; and
  - c.** Shipping containers designed to be attached to and transported by "trailers".
- 14.** "Transferring" means:
- a.** Loading or unloading provided loading and unloading is also covered under either a valid and collectible:
    - (1)** Motor Truck Cargo policy or similar insurance acquired by a trucking company; or
    - (2)** Contingent transportation policy or similar insurance acquired by "your" shipper customer;
  - b.** Moving between "vehicles" or other transporting conveyances; and
  - c.** Temporarily storing before loading or after unloading.
- 15.** "Transit" means the shipment of Covered Property arranged by "you" and "your" "subcontractors".
- 16.** "Transit"
- a.** Begins at the point of transport where "your" "subcontractor" accepts property into its care, custody, or control for the transportation of the property to a specific destination;
  - b.** Includes the ordinary, reasonable, and necessary stops, interruptions, delays, or transfers incidental to the route and method of shipment, including rest periods taken by the drivers; and
  - c.** Ends upon acceptance of the property by or on behalf of the consignee at the specified destination.
- 17.** "Vehicle" means any one land vehicle, truck, tractor, "trailer", or combination of these pulled by one power unit.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TARPAULIN WARRANTY CONDITION**

This endorsement modifies insurance provided under the following:

FREIGHT TRANSPORTATION BROKERS CARGO COVERGE FORM

The following is added to **OTHER CONDITIONS**:

14. **Tarpaulin Warranty** – “We” will not pay for “loss” to Covered Property in transit in an unenclosed vehicle, unless “you” protect the property with a waterproof tarpaulin. If “you” do not protect the property as describe, “we” will pay for direct physical loss or damage to the property only if caused by or resulting from the following:
- a. Fire, lightning or explosion;
  - b. Collision or overturn of the transporting vehicle;
  - c. Collapse of bridge, wharf, dock, platform or culvert;
  - d. Stranding, sinking, burning or collision of any ferry, including general average and salvage changes; or
  - e. Theft, but excluding pilferage.

All other terms and conditions remain unchanged.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MULTIPLE DEDUCTIBLE ENDORSEMENT**

The deductible provisions are amended by the following:

For covered perils and / or coverages described on this schedule, "we" pay only that part of "your" loss over the deductible amount indicated for the described peril in any one occurrence.

<b><u>COVERED PERIL / COVERAGE</u></b>	<b><u>DEDUCTIBLE AMOUNT</u></b>
1. All other covered perils and coverage not described on the Multiple Deductible schedule	
2. <b>Theft from a parked trailer - Vehicles valued to \$60,000</b> Drop loaded trailers at unsecured locations (Not fenced, lighted, plus either gated or cameras)	\$ _____
3. <b>Theft from a parked trailer - Vehicles valued over \$60,000</b> Drop loaded trailers at unsecured locations (Not fenced, lighted, plus either gated or cameras)	\$ _____
4. <b>Theft from a parked trailer</b> Drop loaded trailers at unsecured locations (Not fenced, lighted, plus either gated or cameras)	\$ _____
5. _____ _____ _____	\$ _____
6. _____ _____ _____	\$ _____

This endorsement changes policy

to which it is attached and is effective

at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **FALSE PRETENSE - IMPOSTER THEFT EXTENSION COVERAGE**

In consideration of premium paid the following **Extension Coverage** ' and Limit are added::

**[X ] False Pretense - Imposter Theft Extension Coverage.**

**'Limit', if different than Freight Transportation Brokers Cargo Coverage Limit, is:**

**\$\_\_\_\_\_** This 'Limit' is the most we will pay in any one occurrence.

(The entries required to complete this coverage extension will be shown on the "schedule of coverages".)

### **False Pretense - Imposter Theft --**

"We" cover loss to Covered Property which is caused by or results from theft when an individual, who falsely represents them self to be the representative of the "subcontractor" "you" directly hired, steals the Covered Property.

This coverage extension is subject to the following limitations:

- a. "You" must have used the services of the "subcontractor" for at least one other shipment within the 60 days preceding the theft; or
- b. There is documented written proof, in advance of the date of loss, that "you" verified with a third party source that the contact information provided by the "subcontractor" was valid prior to your hiring the "subcontractor".

"Limit" - The most "we" will pay in any one occurrence is the Freight Transportation Brokers Cargo Coverage Limit, unless a Limit above is indicated.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PROTECTIVE SAFEGUARDS**

This endorsement modifies insurance provided under this policy.

### **SCHEDULE**

<b>Premises No.</b>	<b>Building No.</b>	<b>Protective Safeguards Symbols Applicable</b>
		Describe any "P-8":

**A.** The following is added to the **General Conditions**:

#### **PROTECTIVE SAFEGUARDS**

1. As a condition of this insurance, 'you' are required to maintain the protective devices or services listed in the Schedule above.
2. The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System**, including related maintenance and supervisory services.

Automatic Sprinkler System means:

**a.** Any automatic fire protective or extinguishing system, including connected:

- (1) Sprinklers and discharge nozzles;
- (2) Ducts, pipes, valves and fittings;
- (3) Tanks, their component parts and supports; and
- (4) Pumps and private fire protection mains.

**b.** When supplied from an automatic fire protective system:

- (1) Non-automatic fire protective systems; and
- (2) Hydrants, standpipes and outlets.

**"P-2" Automatic Fire Alarm**, protecting the entire building, that is:

**a.** Connected to a central station; or



b. Reporting to a public or private fire alarm station.

"P-3" **Security Service**, with a recording system or watch clock, making hourly documented rounds covering the entire building, when the premises are not in actual operation.

"P-4" **Burglar Alarm System**, connected to an outside Central Station.

"P-5" **Burglar Alarm System**, connected to an outside alarm but not connected to an outside Central Station.

"P-6" **Silent Electronic Sound Device**, emitting sounds to be picked up at a tracking station.

"P-7" **Private Watchperson**, that you employ for duty within the premises when closed for business, making at least hourly documented rounds.

(Indicate number of watchpersons in the Schedule.)

"P-8" The protective system or service described in the Schedule.

**B.** The following is added to the **Exclusions** Section:

1. 'We' will not pay for loss or damage caused by or resulting from fire if, prior to the fire, 'you':

a. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify 'us' of that fact; or

b. Failed to maintain any protective safeguard listed in the Schedule above, and over which 'you' had control, in complete working order.

If part of an Automatic Sprinkler System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, advance written notification to 'us' will not be necessary if 'you' can restore full protection within 48 hours.

2. Insurance covering any act of stealing ceases during any period 'you' fail to maintain any indicated protective safeguard identified by the symbol in the Schedule for the time of the discontinuance.

However, if for reasons beyond 'your' control:

a. 'You' fail to maintain the alarm system shown in the Schedule but, until that alarm system has been restored 'you' provide at least one watchperson in addition to any number of watchpersons specified in this endorsement, this insurance will continue to apply.

b. 'You' fail to maintain the watchperson service shown in the Schedule the insurance provided by the applicable coverage form will apply only in the reduced amount that the premium for this insurance would have purchased in the absence of 'your' agreement to maintain the service, but no more than fifty percent (50%) of the coverage limit of insurance.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **REFRIGERATION BREAKDOWN COVERAGE**

This endorsement modifies insurance provided under the following:

**FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM**

### **Property In Vehicles**

#### **1. Refrigeration Breakdown Coverage**

'We' extend coverage for 'you' under the Coverage form for 'your' 'subcontractor's' legal liability for direct physical loss or damage resulting from 'spoilage' to 'perishable stock' of others while in due course of 'transit' on or in a 'vehicle'.

#### **2. Coverage Limitations**

'We' only cover loss to 'perishable stock' caused by 'spoilage' when the refrigeration or heating unit of a 'vehicle' transporting covered property has a sudden or accidental breakdown or malfunction.

#### **3. We' Do Not Cover**

"We" do not pay for loss caused by breakdown or malfunction:

- a. of a refrigeration or heating unit if the unit is not inspected at least once each month.

#### **4. Coverage Conditions**

- a. A record of each inspection of a refrigeration or heating unit must be maintained and the records of the inspections retained for at least one year. All records that relate to a loss must be provided to 'us', and 'we' must be allowed to make copies and abstracts.
- b. 'We' will pay for loss caused by breakdown or malfunction that results from the failure to maintain adequate fuel levels for the refrigeration or heating unit by 'your' 'subcontractors', if there is no waiver of subrogation, or a written or oral agreement, between 'you' and 'your' 'subcontractors' that prevents 'our' right to recover the loss amount from 'your' 'subcontractors'.

#### **5. PERILS EXCLUDED**

The exclusion for Spoilage still applies except to the extent that coverage is provided under this endorsement.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE WARRANTY ENDORSEMENT**

Applicable Warranty Endorsements that apply to 'your' coverage terms and conditions under this policy are marked below:

- ☐ Warranted that 'you' will hire only 'subcontractors' that have Motor Truck Cargo coverage with insurance company that has a rating by A.M. Best Co. of 'A -' or higher.
- ☐ Warranted that 'you' will hire only 'subcontractors' that have Motor Truck Cargo coverage limits that equal or exceed 'your' broker cargo coverage limits or limits high enough to meet or exceed the full value of 'your' shipper customer's property values.
- ☐ Warranted that 'you' will not hire any 'subcontractors' that have Federal Motor Carrier Safety Administration (FMCSA) Compliance Review Carrier Safety Ratings of 'Unsatisfactory'.
- ☐ Warranted that 'you' will hire 'subcontractors' through the vetting and eligibility process 'you' have established, and the 'subcontractors' hired will fully meet the requirements 'you' established."

If 'you' breach or do not fully comply with the specific provision terms or requirements of any of the above established warranted conditions, 'we' have a right not to pay for direct physical loss to property of others caused by a covered peril.

**TOKIO MARINE AMERICA INSURANCE COMPANY**  
230 Park Avenue, New York, NY 10169  
(212) 297-6600  
A New York Stock Company



## FREIGHT TRANSPORTATION BROKERS CARGO DECLARATION

**POLICY NUMBER:**

PRIOR POLICY NUMBER:

NAMED INSURED AND MAILING ADDRESS	PRODUCER NAME AND MAILING ADDRESS
	<p>PRODUCER CODE: CONTACT (IF ANY):</p>

### DESCRIPTION OF COVERED PROPERTY

COVERED BROKERAGE PROPERTY CONSISTING OF COMMODITIES INCLUDING:

### POLICY PERIOD

POLICY PERIOD: FROM	TO	at 12:01 a.m. standard time at your mailing address
---------------------	----	-----------------------------------------------------

### LIMITS OF INSURANCE

LIMITS OF INSURANCE ATTACHED TO THIS POLICY:	See <b>Schedule of Coverages</b>
----------------------------------------------	----------------------------------

### STAMPS (if applicable)

POLICY NUMBER:

## FORMS AND ENDORSEMENTS

FORMS AND ENDORSEMENTS ATTACHED TO THIS POLICY: See **Schedule of Forms and Endorsements**

**IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.**

**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.**

COVERAGE PART(S)	PREMIUM
	\$
TOTAL:	\$
PREMIUM SHOWN IS PAYABLE:	

## Reporting Basis

### ☐ Nonreporting Basis

Countersigned: \_\_\_\_\_  
(Date)

By: \_\_\_\_\_  
(Authorized Representative)

Servicing / Issuing Office:

©2014 Tokio Marine Management, Inc.

Includes copyrighted material used with permission of American Association of Insurance Services, Inc.

# TOKIO MARINE AMERICA INSURANCE COMPANY

<b>POLICY NUMBER:</b>	
<b>ENDORSEMENT NUMBER:</b>	
NAMED INSURED:	
PRODUCER:	
PRODUCER CODE:	
EFFECTIVE DATE:	12:01 a.m. standard time at your mailing address shown in the Policy Declarations

## SCHEDULE OF COVERAGES FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE

COVERED PROPERTY		
Describe Property:		
LIMITS	"Limit"	DEDUCTIBLE (If applicable)
<b>Property In Vehicles</b> – The most "we pay for loss involving any one "vehicle" is:	\$	\$
<b>Imposter Theft Coverage</b> (If Different Than Above Limit)	\$	\$
<b>Errors or Omissions Coverage</b> (Excluded [ ])	\$	\$
<b>Contingent Auto Liability Coverage</b> (Excluded [ ])	\$	\$
<b>PROPERTY IN TERMINALS</b>		
(check if applicable)		
<input type="checkbox"/> <b>Attach Additional Terminals Schedule to schedule more Terminals</b>		
<b>Property In Terminals</b> (Excluded [ ]) The most "we" pay for loss in any one "terminal" is:	\$	\$

POLICY NUMBER:

<b>Catastrophe Limit</b> - - The most "we" pay for loss in any one occurrence is:	\$	\$
(check if applicable) <input type="checkbox"/> <b>Other Coverage Deductibles: See Form</b>		
<b>COVERAGE EXTENSIONS</b>		
<b>Defense Costs</b>	See Form	\$
<input type="checkbox"/> <b>Refrigeration Breakdown Coverage</b> (If applicable)	See Form	\$
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<b>REPORTING CONDITIONS</b>		
Reporting Conditions are applicable as described below:		
<b>Reporting Period</b> – (check one) <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annual		
<b>Additional Premium Due After Expiration</b> – When the premium for the coverage provided by this policy is based upon reports of value any additional premium owed to "us" is due on the due date that appears on the billing notice.		
<b>Adjustment Period</b> – (check one) <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annual		
<b>Reports</b> – (check one) Within 30 Days after the end of each reporting period indicated above "you" will report to "us": <input type="checkbox"/> Gross Receipts <input type="checkbox"/> Mileage <input type="checkbox"/> Other (specify):		
Reporting Rate	\$	
<b>PREMIUMS</b>		
Deposit Premium	\$	
Minimum Premium	\$	
Minimum Annual Earned Premium	\$	

POLICY NUMBER:

ADDITIONAL INFORMATION



**TOKIO MARINE AMERICA INSURANCE COMPANY**

<b>POLICY NUMBER:</b>	
<b>ENDORSEMENT NUMBER:</b>	
NAMED INSURED:	
PRODUCER:	
PRODUCER CODE:	
EFFECTIVE DATE:	12:01 a.m. standard time at your mailing address shown in the Policy Declarations

**ADDITIONAL TERMINALS SCHEDULE**  
**FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE**

(The entries required to complete this schedule will be shown below or on the “schedule of coverages”.)

Loc. No.	Terminals	“Limits”
		\$

POLICY NUMBER:

[illegible]

POLICY NUMBER:

©Tokio Marine Management, Inc. 2015

Includes copyrighted material used with permission of American Association of Insurance Services, Inc.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MINIMUM EARNED PREMIUM**

This endorsement modifies insurance provided under 'your' policy.

Applicable Endorsement provisions that apply to 'your' coverage terms and conditions under this policy are marked below:

☐ The Minimum Earned Premium for this policy will be \$\_\_\_\_\_, unless 'we' cancel the policy.

☐ The Minimum Annual Earned Premium for this policy will be \$\_\_\_\_\_ .

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **REPORTING CONDITIONS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM

### **ADDITIONAL CONDITIONS**

**Reporting Conditions** -- The following reporting conditions apply:

#### **1. Reports --**

- a. **You Will Report To Us** -- Within 30 days after the end of each reporting period, "you" will report to "us", as indicated on the Reporting Schedule, the total of one of the following:
- 1) the total receipts (collected and uncollected) earned from "your" operations;
  - 2) "your" total sales from "your" operations;
  - 3) other information as described in the Reporting Schedule.

"Your" operations means "your" operations as covered under the Transportation Broker Cargo Coverage Form.

- b. **Cancellation** -- If "your" coverage is canceled, "you" will report the total receipts, sales, or other information up to and including the date of cancellation and pay any additional premium due.

#### **2. Premium Computation and Adjustment** -- The premium will be adjusted as of each adjustment period indicated on the Reporting Schedule. The computed premium will be determined by multiplying the total receipts, sales, or other information by the rate indicated on the Reporting Schedule.

- a. **Annual Adjustment Period** -- When an annual adjustment period is indicated on the Reporting Schedule, "we" will compare the total computed premium to the deposit premium. If it is more than the deposit premium, "you" will pay "us" the difference. If it is less than the deposit premium, "we" will pay "you" the difference subject to the higher of minimum premium or the minimum annual earned premium indicated on the Reporting Schedule..
- b. **Other Adjustment Period** -- When any other premium adjustment period is indicated, "we" will apply the computed premium to the deposit premium until it is exhausted. "You" will pay "us" all

premiums that exceed the deposit premium. At the end of the policy period, if the computed premium is less than the deposit premium, "we" will pay "you" the difference subject to the minimum premium, or if an annual policy term or longer, the minimum annual earned premium, indicated on the Reporting Schedule.

3. **Provisions That Affect How Much We Pay** -- The following provisions apply to reports that are submitted and may affect How Much We Pay:
- a. **Failure To Submit Reports** -- If "you" have failed to submit the required reports or no report has been submitted, the most "we" will pay is 90% of the "limit".
  - b. **Reported Values Are Less Than The Full Value** -- If "your" last report before a loss shows less than the actual total receipts, sales, or other information during the reporting period, "we" will only pay a part of the loss. "We" will not pay a greater portion of the loss, prior to the application of the deductible, than the total receipts, sales, or other information "you" reported divided by the total receipts, sales, or other information that actually should have been reported during the reporting period.
  - c. **We Will Not Pay More Than The Limit** -- "We" will not pay more than the applicable "limit" regardless of any reported value used in computing the premium.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CONCEALED DAMAGE EXCLUSION**

This endorsement modifies insurance provided under the following:

FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM

### **ADDITIONAL PERILS EXCLUDED**

The following exclusion is added:

#### **Concealed Damage**

"We" do not pay for loss or damage to covered property unless there is visible damage to the shipping container or packaging materials.

Unless this coverage is excluded on 'your' 'subcontractor's' Motor Truck Cargo Coverage, this exclusion does not apply if covered property:

1. has been stolen from a "vehicle" or "terminal"; or
2. is on or in a "vehicle" that has been stolen or that has disappeared.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PROPERTY EXCLUDED**

This endorsement modifies insurance provided under the following:

**FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM**

### **PROPERTY NOT COVERED**

"We" do not cover the property described below (indicate by checking below):

- ☐ 1. Livestock or poultry
- ☐ 2. Liquor (does not include beer or wine)
- ☐ 3. Tobacco products
- ☐ 4. Furs or fur trimmed garments
- ☐ 5. Eggs
- ☐ 6. Refrigerated or heated products
- ☐ 7. \_\_\_\_\_
- ☐ 8. \_\_\_\_\_
- ☐ 9. \_\_\_\_\_
- ☐ 10. \_\_\_\_\_
- ☐ 11. \_\_\_\_\_
- ☐ 12. \_\_\_\_\_
- ☐ 13. \_\_\_\_\_
- ☐ 14. \_\_\_\_\_
- ☐ 15. \_\_\_\_\_



This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PARKED TRAILER EXCLUSION**

This endorsement modifies insurance provided under the following:

**FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM**

### **PERILS EXCLUDED**

#### **Theft From A Parked Trailer**

Except as provided under Parked Trailer Coverage, "we" do not pay for loss to property of others caused by or resulting from theft from a "trailer" that has been parked and has been disconnected from a tractor or other power unit.

#### **Parked Trailer Coverage**

"We" only pay for direct physical loss to covered property caused by theft from a parked and disconnected "trailer" while at a "terminal" or location described in the Parked Trailer Schedule.

### **PARKED TRAILER SCHEDULE**

Terminals and Locations:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **UNATTENDED VEHICLE EXCLUSION**

This endorsement modifies insurance provided under the following:

**FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM**

### **ADDITIONAL PERILS EXCLUDED**

The following exclusion is added:

#### **Theft From An Unattended Vehicle**

"We" do not pay for loss or damage caused by or resulting from theft of property from a "vehicle" or theft or disappearance of property in or on a "vehicle" when the "vehicle" is stolen or disappears unless at the time of the loss:

1. An employee of 'your' 'subcontractor' has been assigned or an owner-operator hired by 'your' 'subcontractor' whose duty was to guard and attend the "vehicle" and its contents; and
2. The employee or owner-operator is in or on the "vehicle" while the "vehicle" is in "transit" or with the "vehicle" at a "terminal" or other location for loading and unloading.

However, if the Parked Trailer Exclusion Endorsement is also part of the Freight Transportation Brokers Cargo Coverage, the Unattended Vehicle Exclusion would not apply if the loaded trailer is disconnected at a final destination terminal or location and the delivery has been completed.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **VIRUS OR BACTERIA EXCLUSION**

This endorsement modifies insurance provided under the following:

FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM

### **DEFINITIONS**

#### **Definitions Amended --**

When "fungus" is a defined "term", the definition of "fungus" is amended to delete reference to a bacterium.

When "fungus or related perils" is a defined "term", the definition of "fungus or related perils" is amended to delete reference to a bacterium.

### **PERILS EXCLUDED**

The additional exclusion set forth below applies to all coverages, coverage extensions, supplemental coverages, optional coverages, and endorsements that are provided by the policy to which this endorsement is attached.

The following exclusion is added under Perils Excluded, item 1.:

#### **Virus or Bacteria --**

"We" do not pay for loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress.

This exclusion applies to, but is not limited to, any loss, cost, or expense as a result of:

- a. any contamination by any virus, bacterium, or other microorganism; or
- b. any denial of access to property because of any virus, bacterium, or other microorganism.

### **OTHER CONDITIONS**

#### **Other Terms Remain in Effect --**

The "terms" of this endorsement, whether or not applicable to any loss, cost, or expense, cannot be construed to provide coverage for a loss, cost, or expense that would otherwise be excluded under the policy to which this endorsement is attached.

This endorsement changes policy \_\_\_\_\_ to which it is attached and is effective  
at 12:01 a.m. standard time at the Insured's mailing address.

Issued to:

Issued by:

Producer:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TOTAL POLLUTION EXCLUSION**

This endorsement modifies insurance provided under the following:

FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE  
FREIGHT TRANSPORTATION BROKERS CARGO LIABILITY COVERAGE FORM  
(INCLUDING ERRORS OR OMISSIONS)

Under **Excluded Perils**, exclusion **Pollutants** does not apply.

<b>State:</b>	District of Columbia	<b>Filing Company:</b>	Tokio Marine America Insurance Company
<b>TOI/Sub-TOI:</b>	09.0 Inland Marine/09.0005 Other Commercial Inland Marine		
<b>Product Name:</b>	Freight Transportation Brokers Cargo Coverage Program		
<b>Project Name/Number:</b>	Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A		

## Supporting Document Schedules

<b>Bypassed - Item:</b>	Readability Certificate
<b>Bypass Reason:</b>	N/A - not applicable for Commercial Lines forms.
<b>Attachment(s):</b>	
<b>Item Status:</b>	
<b>Status Date:</b>	

<b>Bypassed - Item:</b>	Copy of Trust Agreement
<b>Bypass Reason:</b>	N/A - not applicable.
<b>Attachment(s):</b>	
<b>Item Status:</b>	
<b>Status Date:</b>	

<b>Bypassed - Item:</b>	Expedited SERFF Filing Transmittal Form
<b>Bypass Reason:</b>	N/A - not applicable.
<b>Attachment(s):</b>	
<b>Item Status:</b>	
<b>Status Date:</b>	

<b>Satisfied - Item:</b>	Consulting Authorization
<b>Comments:</b>	Please refer to the below letter of authorization.
<b>Attachment(s):</b>	
<b>Item Status:</b>	
<b>Status Date:</b>	

<b>Satisfied - Item:</b>	Cover Letter and Explanatory Memoranda
<b>Comments:</b>	
<b>Attachment(s):</b>	DC Cover Letter.pdf Filing Memorandum.pdf
<b>Item Status:</b>	
<b>Status Date:</b>	

<b>Satisfied - Item:</b>	Letter of Authorization
<b>Comments:</b>	
<b>Attachment(s):</b>	TMAIC Letter of Auth.pdf
<b>Item Status:</b>	

<b>SERFF Tracking #:</b>		WESA-130228307		<b>State Tracking #:</b>				<b>Company Tracking #:</b>		15-DC-3-OM-3-A	
<b>State:</b>		District of Columbia				<b>Filing Company:</b>		Tokio Marine America Insurance Company			
<b>TOI/Sub-TOI:</b>		09.0 Inland Marine/09.0005 Other Commercial Inland Marine									
<b>Product Name:</b>		Freight Transportation Brokers Cargo Coverage Program									
<b>Project Name/Number:</b>		Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A									
<b>Status Date:</b>											



August 27, 2015

Department of Insurance  
Property and Casualty Division  
Form Review Section

RE **Tokio Marine America Insurance Company – NAIC #3098-10945/FEIN #13-4032666**  
**Uncontrolled Commercial Inland Marine**  
**Freight Transportation Brokers Cargo Coverage Program**  
**Form Submission**  
**Company Filing Number: 15-DC-3-OM-3-A**  
**Effective Date: October 1, 2015**

To Whom It May Concern:

The Company is filing for your review and approval their Uncontrolled Commercial Inland Marine new form filing. A letter permitting Westmont Associates, Inc. to submit this filing on the Company's behalf is enclosed.

The Company is expanding their existing Motor Truck Cargo Program to include specifically tailored forms to address the third-party exposure of the Freight Transportation Broker. Attached for your review are the Company's proprietary and American Association of Insurance Services (AAIS) based endorsements. Please be advised that the Company's Freight Transportation Broker products will be used in conjunction with their existing AAIS Inland Marine program. As such, AAIS endorsements, including state amendatory endorsements, will be used where applicable.

Please see the attached Filing Memorandum for additional information.

Please be advised that the Company is requesting an effective date of October 1, 2015.

Your approval and/or acknowledgement of this submission is respectfully requested.

Sincerely,

***Meghan Smart***

Meghan Smart  
Senior Analyst  
[meghans@westmontlaw.com](mailto:meghans@westmontlaw.com)

Enc.

Cc: J. Loughran  
K. Armstrong

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

# INTRODUCTION OF MULTISTATE FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORMS

#### **Applicable Line(s) of Business**

---

This filing applies to the following:

- ◆ Commercial Inland Marine

#### **Applicable Insurance Companies**

---

This filing applies to the following insurance companies:

- ◆ Tokio Marine America Insurance Company

#### **About This Filing**

---

We are introducing the following Coverage Forms and Endorsements:

FT7 00 001	FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM
FT7 00 002	FREIGHT TRANSPORTATION BROKERS – CARGO LEGAL LIABILITY COVERAGE FORM (INCLUDING ERRORS OR OMISSIONS)
FT7 00 004	TARPAULN WARRANTY CONDITION
FT7 03 001	MULTIPLE DEDUCTIBLE ENDORSEMENT
FT7 04 001	FALSE PRETENSE- IMPOSTER THEFT EXTENSION COVERAGE
FT7 04 002	PROTECTIVE SAFEGUARDS
FT7 04 003	REFRIGERATION BREAKDOWN COVERAGE
FT7 04 004	FREIGHT BROKERS TRANSPORTATION CARGO COVERAGE WARRANTY ENDORSMENT
FT7 05 001	FREIGHT BROKERS TRANSPORTATION CARGO POLICY DECLARATIONS
FT7 05 002	SCHEDULE OF COVERAGES
FT7 05 003	ADDITIONAL TERMINALS SCHEDULE
FT7 12 001	MINIMUM EARNED PREMIUM
FT7 13 001	REPORTING CONDITIONS ENDORSEMENT



## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

FT7 21 001	CONCEALED DAMAGE EXCLUSION
FT7 21 002	PROPERTY EXCLUDED
FT7 21 003	PARKED TRAILER EXCLUSION
FT7 21 004	UNATTENDED VEHICLE EXCLUSION
FT7 21 005	VIRUS OR BACTERIA EXCLUSION
FT7 21 006	POLLUTION EXCLUSION

The edition date of this coverage form will be **10 15**.

### Method Of Formatting

---

Since all material is new, we are not using the common format of ~~striking-through~~ deletions and underlining additions.

### Freight Brokers Defined

---

Freight brokers bring together two parties, the companies that need goods shipped (the "consignors") and motor carriers that are willing and able to deliver the cargo to its intended destination within the allotted time. As transportation intermediaries, freight brokers, are neither the consignors nor motor carriers. Some larger firms arrange for various other logistical services, such as inspection and warehousing of cargo. In addition, some freight brokers provide consultation on such matters as the improvement of cargo security and compliance with various state and federal regulations.

### The Legal Environment

---

The Carmack Amendment, which was enacted in 1906 as an amendment to the Interstate Commerce Act of 1887, and is now part of the Interstate Commerce Commission Termination Act of 1995, Imposes strict liability upon the carrier. Thus, a carrier is responsible for all damage to the goods regardless of whether or not the carrier was negligent.

In a court case, Missouri Pacific R. Co. v. Elmore & Stahl 377 U.S. 138 (1964), the United States Supreme Court clarified § 20(11) of the Interstate Commerce Act. Specifically, the court stated that a carrier is not liable for damage when "it affirmatively shows that the damage was occasioned by the shipper, acts of God, the public enemy, public authority, or the inherent vice or nature of the commodity."

Liability under the Carmack Amendment, however, extends beyond the carrier who actually provides the transportation.

49 C.F.R. § 371.2(a) of the Carmack Amendment distinguishes carriers from brokers. In addition, brokers are deemed to be carriers when they "arrange or offer to arrange the

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.”

As examples, brokers are deemed carriers when they (a) agree to transport a shipment, (b) have requested authorization to transport a shipment, and (c) ultimately assume responsibility for transporting a shipment.

When brokers are deemed carriers, they are held strictly liable when those goods are damaged (except when damage is exempted, as in the instances of acts of god).

Case law in this area has supported the statutes governing freight brokers. Listed below are two examples.

♦ *Advantage Freight Network v. Sanchez* WL 4183987 (E.D. Cal. Sept. 10, 2008)

The Eastern District of California treated the defendant as a motor carrier under Carmack, even though the defendant did not take possession of goods and arranged for another to transport the goods.

Summary: The plaintiff hired the defendant to transport a shipment of DVD players. Because the defendant was having problems with his truck, he arranged for another to pick up the goods from the plaintiff and make the delivery. The plaintiff was unaware of the arrangement, and the defendant never actually took possession of the goods. During transportation, the goods were stolen. The court held that the defendant was a motor carrier and liable under the Carmack Amendment, stating: “Mr. Sanchez [defendant] was a ‘motor carrier’ within the meaning of the Interstate Commerce Act when he agreed to transport the goods.”

♦ *Land O’Lakes, Inc. v. Superior Service Transportation of Wisconsin, Inc.*, 500 ESupp. 2d 1150 (E.D. Wis. 6/27/07).

The Eastern District of Wisconsin held that the party who arranged for another party to broker the transport of a load was a motor carrier within the meaning of the Interstate Commerce Act. 500 F. Supp.2d 1150

Summary: The defendant, Superior, was assigned delivery of a shipment from another carrier. Superior did not take possession of the shipment, and arranged for a broker to broker out the shipment. During transportation, the shipment was partially ruined. Superior argued that it was not a motor carrier and not liable under the Carmack Amendment because it did not accept delivery, issue a bill of lading, or provide transport. However, the court held that Carmack liability extends to “any carrier providing transportation or service.” The court further held: While Superior may not have directly transported the shipment, it did arrange for Town Center to broker the transport to Runabout. The ICA defines a “motor carrier” as “a person providing motor vehicle transportation for compensation,” 49 U.S.C. § 13102(12). The ICA further specifies that the term “transportation” includes “services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage,

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

handling, packing, unpacking, and interchange of passengers and property.” 49 U.S.C. § 13102(23)(B). And under the terms of its contract with LOL, Superior was entitled to payment for its services. Based on the undisputed facts of the case, the Court concludes that Superior was acting as a motor carrier for purposes of the Carmack Amendment.

#### **What we are introducing**

---

We are expanding our existing Motor Truck Cargo Program to include specifically tailored forms to address the third-party exposure of the Freight Transportation Broker. Our proprietary forms are the Freight Transportation Brokers Cargo Coverage form, the Freight Transportation Brokers - Cargo Legal Liability Coverage form (Including Errors Or Omissions) and a False Pretense – Imposter Theft Extension Coverage endorsement. Other proprietary and AAIS based endorsements are described in more detail below.

Our Freight Transportation Broker products will be used in conjunction with our existing AAIS Inland Marine program. AAIS endorsements, including state amendatory endorsements, will be used where applicable.

#### **Explanation of Changes**

---

Below please find a description of the new coverage forms and endorsements.

#### **Freight Transportation Brokers Cargo Coverage Form**

This coverage form provides coverage for the sums the insured becomes legally obligated to pay for direct physical loss or damage resulting from their subcontractor’s duty as a common carrier or contract carrier.

Presented below are the important features of each section of the proposed coverage form:

##### ◆ AGREEMENT

- Coverage for covered property in vehicles in due course of transit and in the care, custody and control of the insured’s subcontractor, including loading and unloading provided the subcontractor’s legal liability also includes loading and unloading coverage.
- Coverage for property in terminals or within 150 ft of a terminal location and in the care custody and control of the insured’s subcontractor provided the subcontractor’s legal liability also include coverage for property at a terminal location.

##### ◆ COVERAGE EXTENSIONS

- The option to defend the insured against any suit brought because of loss or damage to covered property caused by a covered loss. .
- Expenses; including those incurred in the defense and investigation of the suit including actual loss of salary up to \$300 per day, judgment interest accrued and costs of a bond for the release of any attachments.

##### ◆ EXCLUSIONS

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

- We do not pay for loss or damage caused directly from civil authority, nuclear hazard or war and military action.
- We do not pay for loss or damage that is caused by or result from criminal, fraudulent, dishonest or illegal acts, loss of use, pollutants, spoilage and voluntary parting.

This coverage form also will not pay for loss or damage from a failure to render any professional services, including errors or omissions.

#### ◆ LOSS PAYMENT

- The coverage form includes the following options for payment in the event of loss. The policy will pay:
  - The value of the lost or damaged property;
  - The cost of repairing or replacing the lost or damaged property;
  - To rebuild, repair or replace the property with other property of equivalent kind and quality; or
  - All or any part of the agreed or appraised value.

#### ◆ DEFINITIONS

- The term “subcontractor” will refer to the trucking company (motor carrier).

### **Freight Transportation Brokers - Cargo Legal Liability Coverage Form (Including Errors Or Omissions)**

This coverage form defends and pays those sums that the insured, a freight broker, becomes legally obligated to pay as damages because of direct physical loss or damage to covered property from any of the covered perils.

Presented below are the important features of each section of the proposed coverage form:

#### ◆ AGREEMENT

- Coverage will only apply to claims against the insured alleging negligence or other wrongdoing in the hiring, of any motor carrier by that insured.
- The accident must result from the ownership, maintenance, use or entrustment to others of the motor carrier’s vehicle.
- The coverage form will offer the insured an option to retain risk via a liability deductible.

#### ◆ DEFENSE PROVISION

- There will be no significant differences; this coverage form has a right and duty to defend the insured for suits to which the insurance applies.

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

#### ◆ COVERED EXPENSES

- Covered expenses will be within the insured's deductible amount, if any, and the coverage form's limits of insurance.

#### ◆ EXCLUSIONS

- All liability assumed under any contract or agreement is excluded.
- Punitive damages are excluded.

#### ◆ LIMITS OF INSURANCE

- The Aggregate Limit will be the most we will pay for the sum of damages because of bodily injury or property damage, covered pollution cost or expense as well as Covered Expenses.

#### ◆ CONDITIONS

- The Other Insurance condition will contain an expanded excess clause.

#### ◆ DEFINITIONS

- The term "subcontractor" will refer to the trucking company (motor carrier).

### **False Pretense – Imposter Theft Extension Coverage**

This endorsement covers loss from theft when an individual falsely represents himself or herself as a representative of the subcontractor.

### **Tarpaulin Warranty Exclusion**

This endorsement excludes, with exception for direct physical loss or damage resulting from stated causes of loss, coverage for loss of covered property in transit if the insured fails to protect the property with a waterproof tarpaulin.

### **Multiple Deductible Endorsement**

This endorsement is used to amend deductible amounts for named covered perils and/or coverages.

The following endorsements are developed based on AAIS Motor Truck Cargo Coverage endorsements and include cosmetic and/or editorial changes to accommodate the Freight Transportation Brokers Coverage program coverage forms. Changes include amending section references/names to match the section references/names in the base coverage forms. Below, please find a brief description of each form.

## **COMMERCIAL INLAND MARINE**

### **Explanatory Memorandum – Forms**

---

#### **Property Excluded**

Property described in this endorsement can be excluded from coverage

#### **Parked Trailer Exclusion**

This endorsement excludes coverage for property of others caused by theft from a trailer that has been parked and disconnected from its power unit. Coverage is provided for covered property caused by theft from a parked and disconnected trailer while at a terminal or location described on the schedule.

#### **Protective Safeguards**

This endorsement allows the insured to list protective safeguards as a condition of insurance for each premises and building number insured.

#### **Reporting Conditions Endorsement**

This endorsement puts the coverage on a reporting basis.

#### **Concealed Damage Exclusion**

This endorsement can be used to exclude loss or damage to covered property unless there is visible damage to the shipping container or packaging materials.

#### **Minimum Earned Premium**

This endorsement lists the minimum earned premium and minimum annual earned premium of the policy.

#### **Unattended Vehicle Exclusion**

This exclusion is used to exclude coverage for loss caused by or resulting from theft from an unattended vehicle unless someone has been assigned to watch over the vehicle or an employee, carrier for hire's employee, or owner-operator is in or on the vehicle while the vehicle is in transit or at a terminal for loading or unloading.

The following endorsements include meaningful modifications from the AAIS Motor Truck Cargo Coverage endorsements. Below are explanations of the various changes:

## **COMMERCIAL INLAND MARINE**

### **Explanatory Memorandum – Forms**

---

#### **Refrigeration Breakdown Endorsement**

Provides coverage for loss that is caused by the mechanical breakdown of heating or refrigeration equipment.

#### **Virus Or Bacteria Exclusion**

This endorsement provides that coverage is excluded for loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes or is capable of causing disease, illness, or physical distress. The exclusion applies to, but is not limited to, any loss, cost, or expense as a result of: any contamination by any virus, bacterium, or other microorganism; or any denial of access to property because of any virus, bacterium, or other microorganism. This endorsement includes the following additional provisions: When "fungus" is a defined term, the definition of "fungus" is amended to delete reference to a bacterium. When "fungus or related perils" is a defined term, the definition of "fungus or related perils" is amended to delete reference to a bacterium. The Virus or Bacteria exclusion within the endorsement supersedes the terms of any other exclusion referring to pollutants or to contamination with respect to any loss, cost, or expense caused by disease-causing agents as described.

#### **Freight Transportation Brokers Cargo Coverage Warranty Endorsement**

This endorsement provides a warranty that the freight broker has conducted due diligence in the hiring of the subcontractors. This includes ensuring that they are insured to a coverage limit equal to or exceeding the full value of the shipped property and that they comply with Federal Motor Carrier Safety Administration (FMCSA) safety standards.

#### **Schedule of Coverages**

This schedule of coverages is used with the Freight Transportation Brokers Cargo Coverage Form to describe covered property, show limits, and indicate the deductible amount.

#### **Additional Terminals Schedule**

This schedule is used with the Schedule Of Coverages to allow for listing of additional terminals

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

#### **Attachment(s)**

---

This Filing includes:

A **final** version of the following Coverage Forms and Endorsements:

FT7 00 001 10 15	FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM
FT7 00 002 10 15	FREIGHT TRANSPORTATION BROKERS – CARGO LEGAL LIABILITY COVERAGE FORM (INCLUDING ERRORS OR OMISSIONS)
FT7 00 004 10 15	TARPAULN WARRANTY CONDITION
FT7 03 001 10 15	MULTIPLE DEDUCTIBLE ENDORSEMENT
FT7 04 001 10 15	FALSE PRETENSE- IMPOSTER THEFT EXTENSION COVERAGE
FT7 04 002 10 15	PROTECTIVE SAFEGUARDS
FT7 04 003 10 15	REFRIGERATION BREAKDOWN COVERAGE
FT7 04 004 10 15	FREIGHT BROKERS TRANSPORTATION CARGO COVERAGE WARRANTY ENDORSEMENT
FT7 05 001 10 15	FREIGHT BROKERS TRANSPORTATION CARGO POLICY DECLARATIONS
FT7 05 002 10 15	SCHEDULE OF COVERAGES
FT7 05 003 10 15	ADDITIONAL TERMINALS SCHEDULE
FT7 12 001 10 15	MINIMUM EARNED PREMIUM
FT7 13 001 10 15	REPORTING CONDITIONS ENDORSEMENT
FT7 21 001 10 15	CONCEALED DAMAGE EXCLUSION
FT7 21 002 10 15	PROPERTY EXCLUDED
FT7 21 003 10 15	PARKED TRAILER EXCLUSION
FT7 21 004 10 15	UNATTENDED VEHICLE EXCLUSION
FT7 21 005 10 15	VIRUS OR BACTERIA EXCLUSION
FT7 21 006 10 15	POLLUTION EXCLUSION



May 1, 2015

RE: Tokio Marine America Insurance Company  
NAIC#: 3098-10945  
FEIN#: 13-4032666  
Letter of Authorization  
Filing of Forms, Rates and Rules

In accordance with the applicable statutes and regulations of your state, Nancy Stepanski, Wesley Pohler, Jennifer Waldron, Sherri Penn and Westmont Associates, Inc. are hereby authorized to file form, rate and rule filings on behalf of the Company.

Sincerely,



Patricia Bartkus  
Assistant Vice President, Corporate Underwriting  
Personal Lines & CUW Operations

State:	District of Columbia	Filing Company:	Tokio Marine America Insurance Company
TOI/Sub-TOI:	09.0 Inland Marine/09.0005 Other Commercial Inland Marine		
Product Name:	Freight Transportation Brokers Cargo Coverage Program		
Project Name/Number:	Freight Transportation Brokers Cargo Coverage Program/15-DC-3-OM-3-A		

## Superseded Schedule Items

Please note that all items on the following pages are items, which have been replaced by a newer version. The newest version is located with the appropriate schedule on previous pages. These items are in date order with most recent first.

Creation Date	Schedule Item Status	Schedule	Schedule Item Name	Replacement Creation Date	Attached Document(s)
09/01/2015		Supporting Document	Cover Letter and Explanatory Memoranda	09/03/2015	DC Cover Letter.pdf Filing Memorandum.pdf (Superceded)

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

# INTRODUCTION OF MULTISTATE FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORMS

## **Applicable Line(s) of Business**

---

This filing applies to the following:

- ◆ Commercial Inland Marine

## **Applicable Insurance Companies**

---

This filing applies to the following insurance companies:

- ◆ Tokio Marine America Insurance Company

## **About This Filing**

---

We are introducing the following Coverage Forms and Endorsements:

FT7 00 001	FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM
FT7 00 002	FREIGHT TRANSPORTATION BROKERS – CARGO LEGAL LIABILITY COVERAGE FORM (INCLUDING ERRORS OR OMISSIONS)
FT7 00 004	TARPAULN WARRANTY CONDITION
FT7 03 001	MULTIPLE DEDUCTIBLE ENDORSEMENT
FT7 04 001	FALSE PRETENSE- IMPOSTER THEFT EXTENSION COVERAGE
FT7 04 002	PROTECTIVE SAFEGUARDS
FT7 04 003	REFRIGERATION BREAKDOWN COVERAGE
FT7 04 004	FREIGHT BROKERS TRANSPORTATION CARGO COVERAGE WARRANTY ENDORSEMENT
FT7 05 001	POLICY DECLARATIONS
FT7 05 002	SCHEDULE OF COVERAGES
FT7 05 003	ADDITIONAL TERMINALS SCHEDULE
FT7 12 001	MINIMUM EARNED PREMIUM
FT7 13 001	REPORTING CONDITIONS ENDORSEMENT

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

FT7 21 001	CONCEALED DAMAGE EXCLUSION
FT7 21 002	PROPERTY EXCLUDED
FT7 21 003	PARKED TRAILER EXCLUSION
FT7 21 004	UNATTENDED VEHICLE EXCLUSION
FT7 21 005	VIRUS OR BACTERIA EXCLUSION
FT7 21 006	POLLUTION EXCLUSION

The edition date of this coverage form will be **10 15**.

### Method Of Formatting

---

Since all material is new, we are not using the common format of ~~striking-through~~ deletions and underlining additions.

### Freight Brokers Defined

---

Freight brokers bring together two parties, the companies that need goods shipped (the "consignors") and motor carriers that are willing and able to deliver the cargo to its intended destination within the allotted time. As transportation intermediaries, freight brokers, are neither the consignors nor motor carriers. Some larger firms arrange for various other logistical services, such as inspection and warehousing of cargo. In addition, some freight brokers provide consultation on such matters as the improvement of cargo security and compliance with various state and federal regulations.

### The Legal Environment

---

The Carmack Amendment, which was enacted in 1906 as an amendment to the Interstate Commerce Act of 1887, and is now part of the Interstate Commerce Commission Termination Act of 1995, Imposes strict liability upon the carrier. Thus, a carrier is responsible for all damage to the goods regardless of whether or not the carrier was negligent.

In a court case, Missouri Pacific R. Co. v. Elmore & Stahl 377 U.S. 138 (1964), the United States Supreme Court clarified § 20(11) of the Interstate Commerce Act. Specifically, the court stated that a carrier is not liable for damage when "it affirmatively shows that the damage was occasioned by the shipper, acts of God, the public enemy, public authority, or the inherent vice or nature of the commodity."

Liability under the Carmack Amendment, however, extends beyond the carrier who actually provides the transportation.

49 C.F.R. § 371.2(a) of the Carmack Amendment distinguishes carriers from brokers. In addition, brokers are deemed to be carriers when they "arrange or offer to arrange the

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.”

As examples, brokers are deemed carriers when they (a) agree to transport a shipment, (b) have requested authorization to transport a shipment, and (c) ultimately assume responsibility for transporting a shipment.

When brokers are deemed carriers, they are held strictly liable when those goods are damaged (except when damage is exempted, as in the instances of acts of God).

Case law in this area has supported the statutes governing freight brokers. Listed below are two examples.

♦ *Advantage Freight Network v. Sanchez* WL 4183987 (E.D. Cal. Sept. 10, 2008)

The Eastern District of California treated the defendant as a motor carrier under Carmack, even though the defendant did not take possession of goods and arranged for another to transport the goods.

Summary: The plaintiff hired the defendant to transport a shipment of DVD players. Because the defendant was having problems with his truck, he arranged for another to pick up the goods from the plaintiff and make the delivery. The plaintiff was unaware of the arrangement, and the defendant never actually took possession of the goods. During transportation, the goods were stolen. The court held that the defendant was a motor carrier and liable under the Carmack Amendment, stating: “Mr. Sanchez [defendant] was a ‘motor carrier’ within the meaning of the Interstate Commerce Act when he agreed to transport the goods.”

♦ *Land O’Lakes, Inc. v. Superior Service Transportation of Wisconsin, Inc.*, 500 ESupp. 2d 1150 (E.D. Wis. 6/27/07).

The Eastern District of Wisconsin held that the party who arranged for another party to broker the transport of a load was a motor carrier within the meaning of the Interstate Commerce Act. 500 F. Supp.2d 1150

Summary: The defendant, Superior, was assigned delivery of a shipment from another carrier. Superior did not take possession of the shipment, and arranged for a broker to broker out the shipment. During transportation, the shipment was partially ruined. Superior argued that it was not a motor carrier and not liable under the Carmack Amendment because it did not accept delivery, issue a bill of lading, or provide transport. However, the court held that Carmack liability extends to “any carrier providing transportation or service.” The court further held: While Superior may not have directly transported the shipment, it did arrange for Town Center to broker the transport to Runabout. The ICA defines a “motor carrier” as “a person providing motor vehicle transportation for compensation,” 49 U.S.C. § 13102(12). The ICA further specifies that the term “transportation” includes “services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage,

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

handling, packing, unpacking, and interchange of passengers and property.” 49 U.S.C. § 13102(23)(B). And under the terms of its contract with LOL, Superior was entitled to payment for its services. Based on the undisputed facts of the case, the Court concludes that Superior was acting as a motor carrier for purposes of the Carmack Amendment.

#### **What we are introducing**

---

We are expanding our existing Motor Truck Cargo Program to include specifically tailored forms to address the third-party exposure of the Freight Transportation Broker. Our proprietary forms are the Freight Transportation Brokers Cargo Coverage form, the Freight Transportation Brokers - Cargo Legal Liability Coverage form (Including Errors Or Omissions) and a False Pretense – Imposter Theft Extension Coverage endorsement. Other proprietary and AAIS based endorsements are described in more detail below.

Our Freight Transportation Broker products will be used in conjunction with our existing AAIS Inland Marine program. AAIS endorsements, including state amendatory endorsements, will be used where applicable.

#### **Explanation of Changes**

---

Below please find a description of the new coverage forms and endorsements.

#### **Freight Transportation Brokers Cargo Coverage Form**

This coverage form provides coverage for the sums the insured becomes legally obligated to pay for direct physical loss or damage resulting from their subcontractor’s duty as a common carrier or contract carrier.

Presented below are the important features of each section of the proposed coverage form:

##### ◆ AGREEMENT

- Coverage for covered property in vehicles in due course of transit and in the care, custody and control of the insured’s subcontractor, including loading and unloading provided the subcontractor’s legal liability also includes loading and unloading coverage.
- Coverage for property in terminals or within 150 ft of a terminal location and in the care custody and control of the insured’s subcontractor provided the subcontractor’s legal liability also include coverage for property at a terminal location.

##### ◆ COVERAGE EXTENSIONS

- The option to defend the insured against any suit brought because of loss or damage to covered property caused by a covered loss. .
- Expenses; including those incurred in the defense and investigation of the suit including actual loss of salary up to \$300 per day, judgment interest accrued and costs of a bond for the release of any attachments.

##### ◆ EXCLUSIONS

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

- We do not pay for loss or damage caused directly from civil authority, nuclear hazard or war and military action.
- We do not pay for loss or damage that is caused by or result from criminal, fraudulent, dishonest or illegal acts, loss of use, pollutants, spoilage and voluntary parting.

This coverage form also will not pay for loss or damage from a failure to render any professional services, including errors or omissions.

#### ◆ LOSS PAYMENT

- The coverage form includes the following options for payment in the event of loss. The policy will pay:
  - The value of the lost or damaged property;
  - The cost of repairing or replacing the lost or damaged property;
  - To rebuild, repair or replace the property with other property of equivalent kind and quality; or
  - All or any part of the agreed or appraised value.

#### ◆ DEFINITIONS

- The term “subcontractor” will refer to the trucking company (motor carrier).

### **Freight Transportation Brokers - Cargo Legal Liability Coverage Form (Including Errors Or Omissions)**

This coverage form defends and pays those sums that the insured, a freight broker, becomes legally obligated to pay as damages because of direct physical loss or damage to covered property from any of the covered perils.

Presented below are the important features of each section of the proposed coverage form:

#### ◆ AGREEMENT

- Coverage will only apply to claims against the insured alleging negligence or other wrongdoing in the hiring, of any motor carrier by that insured.
- The accident must result from the ownership, maintenance, use or entrustment to others of the motor carrier’s vehicle.
- The coverage form will offer the insured an option to retain risk via a liability deductible.

#### ◆ DEFENSE PROVISION

- There will be no significant differences; this coverage form has a right and duty to defend the insured for suits to which the insurance applies.

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

#### ◆ COVERED EXPENSES

- Covered expenses will be within the insured's deductible amount, if any, and the coverage form's limits of insurance.

#### ◆ EXCLUSIONS

- All liability assumed under any contract or agreement is excluded.
- Punitive damages are excluded.

#### ◆ LIMITS OF INSURANCE

- The Aggregate Limit will be the most we will pay for the sum of damages because of bodily injury or property damage, covered pollution cost or expense as well as Covered Expenses.

#### ◆ CONDITIONS

- The Other Insurance condition will contain an expanded excess clause.

#### ◆ DEFINITIONS

- The term "subcontractor" will refer to the trucking company (motor carrier).

### **False Pretense – Imposter Theft Extension Coverage**

This endorsement covers loss from theft when an individual falsely represents himself or herself as a representative of the subcontractor.

### **Tarpaulin Warranty Exclusion**

This endorsement excludes, with exception for direct physical loss or damage resulting from stated causes of loss, coverage for loss of covered property in transit if the insured fails to protect the property with a waterproof tarpaulin.

### **Multiple Deductible Endorsement**

This endorsement is used to amend deductible amounts for named covered perils and/or coverages.

The following endorsements are developed based on AAIS Motor Truck Cargo Coverage endorsements and include cosmetic and/or editorial changes to accommodate the Freight Transportation Brokers Coverage program coverage forms. Changes include amending section references/names to match the section references/names in the base coverage forms. Below, please find a brief description of each form.



## **COMMERCIAL INLAND MARINE**

### **Explanatory Memorandum – Forms**

---

#### **Property Excluded**

Property described in this endorsement can be excluded from coverage

#### **Parked Trailer Exclusion**

This endorsement excludes coverage for property of others caused by theft from a trailer that has been parked and disconnected from its power unit. Coverage is provided for covered property caused by theft from a parked and disconnected trailer while at a terminal or location described on the schedule.

#### **Protective Safeguards**

This endorsement allows the insured to list protective safeguards as a condition of insurance for each premises and building number insured.

#### **Reporting Conditions Endorsement**

This endorsement puts the coverage on a reporting basis.

#### **Concealed Damage Exclusion**

This endorsement can be used to exclude loss or damage to covered property unless there is visible damage to the shipping container or packaging materials.

#### **Minimum Earned Premium**

This endorsement lists the minimum earned premium and minimum annual earned premium of the policy.

#### **Unattended Vehicle Exclusion**

This exclusion is used to exclude coverage for loss caused by or resulting from theft from an unattended vehicle unless someone has been assigned to watch over the vehicle or an employee, carrier for hire's employee, or owner-operator is in or on the vehicle while the vehicle is in transit or at a terminal for loading or unloading.

The following endorsements include meaningful modifications from the AAIS Motor Truck Cargo Coverage endorsements. Below are explanations of the various changes:

## **COMMERCIAL INLAND MARINE**

### **Explanatory Memorandum – Forms**

---

#### **Refrigeration Breakdown Endorsement**

Provides coverage for loss that is caused by the mechanical breakdown of heating or refrigeration equipment.

#### **Virus Or Bacteria Exclusion**

This endorsement provides that coverage is excluded for loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes or is capable of causing disease, illness, or physical distress. The exclusion applies to, but is not limited to, any loss, cost, or expense as a result of: any contamination by any virus, bacterium, or other microorganism; or any denial of access to property because of any virus, bacterium, or other microorganism. This endorsement includes the following additional provisions: When "fungus" is a defined term, the definition of "fungus" is amended to delete reference to a bacterium. When "fungus or related perils" is a defined term, the definition of "fungus or related perils" is amended to delete reference to a bacterium. The Virus or Bacteria exclusion within the endorsement supersedes the terms of any other exclusion referring to pollutants or to contamination with respect to any loss, cost, or expense caused by disease-causing agents as described.

#### **Freight Transportation Brokers Cargo Coverage Warranty Endorsement**

This endorsement provides a warranty that the freight broker has conducted due diligence in the hiring of the subcontractors. This includes ensuring that they are insured to a coverage limit equal to or exceeding the full value of the shipped property and that they comply with Federal Motor Carrier Safety Administration (FMCSA) safety standards.

#### **Schedule of Coverages**

This schedule of coverages is used with the Freight Transportation Brokers Cargo Coverage Form to describe covered property, show limits, and indicate the deductible amount.

#### **Additional Terminals Schedule**

This schedule is used with the Schedule Of Coverages to allow for listing of additional terminals

## COMMERCIAL INLAND MARINE

### Explanatory Memorandum – Forms

---

#### Attachment(s)

---

This Filing includes:

A **final** version of the following Coverage Forms and Endorsements:

FT7 00 001 10 15	FREIGHT TRANSPORTATION BROKERS CARGO COVERAGE FORM
FT7 00 002 10 15	FREIGHT TRANSPORTATION BROKERS – CARGO LEGAL LIABILITY COVERAGE FORM (INCLUDING ERRORS OR OMISSIONS)
FT7 00 004 10 15	TARPAULN WARRANTY CONDITION
FT7 03 001 10 15	MULTIPLE DEDUCTIBLE ENDORSEMENT
FT7 04 001 10 15	FALSE PRETENSE- IMPOSTER THEFT EXTENSION COVERAGE
FT7 04 002 10 15	PROTECTIVE SAFEGUARDS
FT7 04 003 10 15	REFRIGERATION BREAKDOWN COVERAGE
FT7 04 004 10 15	FREIGHT BROKERS TRANSPORTATION CARGO COVERAGE WARRANTY ENDORSEMENT
FT7 05 001 10 15	FREIGHT BROKERS TRANSPORTATION CARGO POLICY DECLARATIONS
FT7 05 002 10 15	SCHEDULE OF COVERAGES
FT7 05 003 10 15	ADDITIONAL TERMINALS SCHEDULE
FT7 12 001 10 15	MINIMUM EARNED PREMIUM
FT7 13 001 10 15	REPORTING CONDITIONS ENDORSEMENT
FT7 21 001 10 15	CONCEALED DAMAGE EXCLUSION
FT7 21 002 10 15	PROPERTY EXCLUDED
FT7 21 003 10 15	PARKED TRAILER EXCLUSION
FT7 21 004 10 15	UNATTENDED VEHICLE EXCLUSION
FT7 21 005 10 15	VIRUS OR BACTERIA EXCLUSION
FT7 21 006 10 15	POLLUTION EXCLUSION